

Editorial

Sille Stidsen and Marianne Wiben Jensen

“*Why should forest communities enter into management agreements concerning forests that they have lived in and managed for centuries?*” asks Sena in his article on the Mau forest in Kenya in this volume. The question points to the very heart of the theme this issue of *Indigenous Affairs* deals with, namely conflicting interests over forests and their resources. Many of the world’s indigenous peoples live in and around forests, and practice lifestyles that are closely linked to these forests in terms of subsistence, cash income, medicinal, cultural and spiritual values, etc. They are highly dependent on their forest homes for their survival. On a global basis, it is estimated that 60 million indigenous people are almost wholly dependent on forest resources for their livelihood. Many of these people find their livelihood, their cultural integrity and, in some cases, even their survival as peoples threatened as their forest homes are encroached upon by logging companies and other businesses seeking to make a profit from the forests’ resources.

IWGIA has, during 2006, become increasingly involved in discussions on sustainable logging. IWGIA is member of an advisory group to the Danish Industrialisation Fund for Developing Countries (IFU) in relation to a loan it has granted to the logging company *Congolaise Industrielle des Bois* (CIB), now owned by the big Danish timber company Dalhoff Larsen & Horneman A/S. As one of the first logging companies in Central Africa, CIB recently obtained Forest Stewardship Council (FSC) certification for some parts of its large concession in the Republic of Congo. For more information on this, please see the article by Jerome Lewis and John Nelson. The IFU advisory group visited the CIB concession in November 2006 and there was broad agreement that the CIB is doing pioneering work on sustainable logging that could be of inspiration to other logging companies in the region and elsewhere. IWGIA is also a member of an advisory group to the Danish Ministry of Environment, which is revising the Danish guidelines for public procurement of tropical timber. Together with other likeminded NGOs, IWGIA is seeking to ensure that the guidelines will recommend the highest possible standards for sustainable timber, and that only timber coming from forests managed sustainably, in line with the fundamental rights of indigenous peoples, will be accepted. For more information on this process, please see the article by Sille Stidsen.

With this issue of *Indigenous Affairs*, we wish to contribute to an analysis of the complex interplay between the policies and laws governing forest management, logging companies’ operations and the effects of their logging, the market these companies supply and, above all, the international standards that in one way or another define frameworks within which companies and governments are supposed to manage the world’s forests.

Threats to indigenous peoples’ livelihoods

Almost all the articles bear witness to the suffering that logging and forest loss causes to indigenous forest-dwelling communities. In the Congo Basin in Central Africa, logging and the illegal bushmeat trade that normally comes with commercial logging pose a serious threat to indigenous forest communities, yet there are few serious attempts to conduct sustainable logging that seeks to protect the rights and livelihoods of indigenous peoples. In their article, Lewis and Nelson give an overview of the critical situation in the Congo Basin.

Mulvagh describes in her article how the Pygmies’ survival as peoples is being threatened in the Democratic Republic of Congo (DRC) by a Forest Code that prioritises commercial use and conservation over community needs. The forest gives them access to a secure means of subsistence and medical plants, and it is crucial to practicing their customs. Without

urgent action, the lands, territories and resources of indigenous peoples in DRC will continue to be irreversibly degraded, depriving the affected peoples of the source of their physical, cultural, economic and spiritual sustenance, and threatening their very existence. Likewise, from Gabon we hear how logging concessions are being delineated and allocated without any consultation of the forest-dwelling Pygmy communities, whose traditional mobile lifestyle as hunter-gatherers is not recognized or protected by Gabonese law (Knight's article). As described by Sena, the situation is also serious in Kenya where the traditional livelihoods of the Ogiek hunter-gatherers of the Mau forest is under threat from a forest law that does not recognize their rights to their lands, and from massive and uncontrolled logging.

Large parts of Asia's tropical forests have already disappeared due to aggressive, unsustainable and uncontrolled logging and much forest land has been transformed into commercial plantations. In Indonesia, there have been attempts to decentralise forest management, allowing local administration instead of national authorities to take charge of granting logging concessions. Unfortunately, the results have at best been mixed. Even though the logging companies had to sign contracts with the local forest communities, this did not result in genuine community participation and control but rather in limited economic compensation/revenue sharing with no long lasting impact. After three years of decentralization, the Indonesian government has decided to recentralize forest management, arguing that there was too much abuse and uncontrolled logging.

Innovative approaches

Some of the articles in this issue of *Indigenous Affairs* offer, however, insights into recent successful efforts to promote indigenous peoples' right to control their forest resources, or at least minimize the negative effects of logging on their lands and territories.

Lewis and Nelson's article shows how a logging company in Northern Congo are using innovative methods to involve the forest-dwelling Pygmy communities in mapping the forest resources before planning which trees to cut, where to construct the logging roads, etc. In this way, they ensure that sites with a special cultural or spiritual value, or areas specifically important for their hunting practices, are protected.

In British Columbia in Canada, a programme integrating traditional (indigenous) and scientific approaches to forest management has been established. In their article, Fondahl, Leon and Grainger describe this programme, which is a joint initiative between the indigenous Tl'Az't'en Nation and the University of Northern British Columbia. A key aspect of the programme has been the identification of indigenous criteria, indicators and values for sustainable forest management, which are used in forestry planning and environmental monitoring. Important here is the fact that these specific criteria emphasize social and cultural values as well as economic and ecological outcomes.

In the Finnish Sápmi, the Sámi reindeer herders have had some success recently in their struggle for recognition and protection of their right to practice their traditional livelihood activity. Lawrence and Raitio analyse the dispute between reindeer herders and the state's forestry industry, which dates back to the 1950s. The conflicting interests are clear in that the old forests of Northern Finland are typically both valuable winter grazing areas for the Sámi, who regard them as part of their traditional territory, and rich in timber. Since 2002, the authors argue, the joint campaigning of the political Sámi organizations, individual reindeer herding cooperatives and environmental organizations has resulted in serious challenges to the state forestry operations in the area as well as to Finnish politics in relation to Sámi rights.

Key players in the protection of indigenous forest peoples

Protecting indigenous forest-dwelling communities from destructive logging is a complex problem, with many actors involved. Firstly, governments are responsible for developing and implementing laws that comply with existing international human rights standards, and provide special protection for indigenous peoples' rights.

At the same time, regulation of the international timber market is crucial since, ultimately, the fact that timber and wood products are much in demand on a world-wide basis is the driving force behind the over-exploitation of the world's forests. Timber consuming countries have a responsibility to develop policies that ban the import, sale and purchase of unsustainably logged timber (read more about such policy development in the last article in this volume).

Last but not least, timber companies have a serious job ahead of them in terms of increasing the production and promotion of sustainable timber. Existing certification schemes such as the internationally recognized and used FSC (Forest Stewardship Council) certificate are key frameworks for ensuring sustainable logging, which also takes the rights of indigenous peoples seriously. There is no doubt that the production of sustainable timber is complicated and demanding and implies long-term strategic planning. As Lewis and Nelson's article shows, however, it *is* possible to develop innovative ways of ensuring the free, prior and informed consent of the indigenous forest peoples and genuinely involve them in forest management, even in highly challenging environments such as the Congo Basin.

Communication between the companies and the people affected by their operations in the world's forests is fundamental, and peoples' organizations and NGOs have a crucial role to play in ensuring this. They must continue to communicate indigenous peoples' needs and demands to those responsible for forest management planning (governments and businesses), since these needs are often invisible or incomprehensible to them. As described in a number of articles in this volume (Lewis and Nelson, Fondahl, Leon and Grainger, Lawrence and Raitio), mapping of traditional land use for subsistence, cultural and spiritual practices is central to this. Monitoring logging companies' actual behaviour in the forest and documenting the impacts of their operations is another important task. And, last but not least, finding powerful ways of using this documentation to put pressure on those responsible for the destructive exploitation of forest resources is crucial. National and international campaigning, the filing of complaints with national and international human rights bodies, are some of the methods described in the articles in this volume.

Huge and fast profits and widespread corruption are major factors behind unsustainable or illegal logging. However, ultimately, sustainable logging should be in the interest of the states where logging takes place as it ensures the regeneration of the forests and thereby of vital economic national assets. A huge task lies ahead to sensitize the world's consumers as to the meaning and importance of sustainable timber and thereby increase the demand for it. This task will involve common efforts and, possibly, new alliances between responsible and progressive timber companies, governments and environmental and human rights NGOs.

IWGIA's statement

UN General Assembly fails to bring hope to world's indigenous peoples

More than two decades of efforts to promote international human rights standards for the safety and well-being of Indigenous Peoples appear to have failed following the adoption of a motion by the Third Committee of the UN General Assembly on 28th November 2006 to defer the historic adoption of the UN Declaration on the Rights of Indigenous Peoples. The motion, promoted by few Western countries and put forward by the Namibian delegation on behalf of the African Group of States, was put to the vote with a majority of 82 nation states in favour, 67 against and 25 abstentions.

As a non-governmental organization devoted to promoting the rights of indigenous peoples worldwide and which has, from the very beginning, been directly involved in the discussions regarding the UN Declaration on the Rights of Indigenous Peoples, IWGIA wishes to make known its immeasurable dismay and concern at the decision taken yesterday by the Third Committee of the UN General Assembly. We fear this may mean that the United Nations will never adopt a strong international human rights standard that promotes and respects the fundamental rights of indigenous peoples.

We also believe that the General Assembly's failure in this regard is a serious setback for the integrity of the newly-established Human Rights Council. The Council, mandated by the General Assembly itself to promote universal respect for the protection of human rights and fundamental freedoms for all, had urged the General Assembly to formally adopt the Declaration without delay.

By not adopting the UN Declaration on the Rights of Indigenous Peoples, the UN General Assembly has undoubtedly not only deafeningly failed to enhance the capacity of the international human rights system to address some of the most pervasive and reprehensible human rights violations in the world today but has also missed an historic opportunity to advance the rights and aspirations of the world's indigenous peoples. The ambiguity of the resolution adopted by the Third Committee makes it very difficult to predict the future that lies ahead for the Declaration. The current text is the result of more than 22 years of arduous dialogue between indigenous peoples and governments and is now widely accepted among those who have been involved in this process. We therefore believe that yet more months of undefined government consultations will in no way improve its chances of being adopted but can rather be seen as an attempt by governments such as Australia, New Zealand, the USA and Canada - who have stubbornly opposed the Declaration's text as adopted by the Human Rights Council - to butcher it or to block its final adoption all together. We are sure that the current disappointment and dismay that indigenous peoples, human rights NGOs and international institutions are feeling today is also shared by those governments who are strongly committed to advocating for adoption of the Declaration.

Given that it is difficult to envisage, at this moment in time, what the full significance and implications of the passing of Namibia's resolution will be, it is essential that all those governments who have been thus far committed to the UN Declaration on the Rights of Indigenous Peoples redouble their efforts and work, together with indigenous peoples, to promote the General Assembly's adoption of the text approved by the Human Rights Council in June 2006.

28 November 2006

IWGIA STATEMENT

The High Court ruling in Botswana is a milestone for the recognition of indigenous peoples' rights in Africa

On the Botswana High Court made a historical ruling on the rights of the San/Bushmen people to live in the Central Kalahari Game Reserve. Since the founding of the Bushman organisation, the First Peoples of the Kalahari, in the early 1990s the Bushmen have defended this right and in the end they brought the legality of the eviction from the Game Reserve to the Court.

The recent ruling by the High Court is in a number of ways a win-win case. It is a legal victory for the Bushmen and it is a political victory for a democratic system of which the independence of the Court is vital. The Bushmen might have been sceptical that the court would rule against the state, but the outcome of the High Court ruling has given new strength to the legal system.

But the Botswana High Court ruling have much larger ramifications than the decisions about the rights of the Bushmen to live in the Central Kalahari Game Reserve. For about 20 years the United Nations have drafted a declaration on the rights of indigenous peoples. Included in the text that was adopted by the UN Human Rights Council in June 2006, and that is currently under consideration of the General Assembly for its final adoption, is a paragraph that states that 'Indigenous Peoples have the right of self-determination'. Some states have expressed the fear that this will imply that indigenous peoples have the right of secession. This is however unfounded and far from the reality in which indigenous peoples in Africa lives, and the claim of the Bushmen to live in the Central Kalahari Game Reserve if they so wish is exactly a claim of the right of self-determination. It is a right not to be evicted from their lands without their consent.

Some African governments, Botswana included, have been very sceptical about the Declaration of the Rights of Indigenous Peoples. The Botswana High Court ruling should remove that scepticism. The indigenous Bushmen expressed confidence that their claim for self-determination could be accommodated by the existing legal structures and the ruling confirmed the integrity of a state institution vis-à-vis this claim.

IWGIA expects that the High Court ruling will encourage African governments to endorse the UN Declaration on the Rights of Indigenous Peoples. Africa has already taken a lead when the African Commission on Human and Peoples' Rights adopted a report on indigenous populations and communities in Africa. This process has been noticed all over the world and with the High Court ruling in Botswana another milestone on human rights in Africa might have been reached and should be used for the advantages for marginalized peoples in all parts of the world.

We all know that for legal decisions to be realised in a long perspective there is a need for political will. There are practical steps to be taken if the rights of the Central Kalahari Bushmen shall have any practical implications. Although the High Court ruling did not include such issues we urge the Botswana government to take the necessary measures for providing services for those people who want to live in the Central Kalahari Game Reserve.

13 December 2006

Logging in the Congo Basin. What hope for indigenous peoples' resources, and their environments?

Jerome Lewis and John Nelson

The Congo Basin

The Congo Basin in Central Africa contains some of the largest and most biodiverse tracts of rainforest areas left in the world, second in size only to the Amazon Basin. They are also home to an estimated 29 million rural people,¹ including up to 500,000 indigenous "Pygmy"² hunter-gatherers and former hunter-gatherers.³

In the last century, Congo Basin forests have been targeted for intensive exploitation by outsiders seeking ivory, wild rubber, skins, bushmeat, timber and, more recently, plantation products such as coffee, cocoa, rubber and palm oil. In the past half century, logging companies have become increasingly active. Local and indigenous communities have always been crucial to the success of this commerce and industrial activity. Despite this, the bulk of the profits from the exploitation of these goods usually ends up in the pockets of outsiders. In the past, local people's collaboration with these outsider-dominated extractive industries was ensured through a variety of means that included direct coercion or forced labour,⁴ slavery and, more frequently in recent times, in exchange for very low wages or in-kind payments. This remains the case in many areas today.

Throughout the region, indigenous Pygmy communities face stigmatisation and severe social, political and economic marginalisation from their villager neighbours who dominate the economy, the state and its structures. Many villagers in the region consider Pygmy peoples to be like animals, who must be kept away from villager places, who cannot share food or drink from the same bottle or cup, and who have no basic rights. Many such groups attempt to exploit this for economic benefit and claim special rights over the labour and persons of Pygmy people. They often talk about these claims over Pygmies in terms of slavery and serfdom. Like many other Pygmy peoples, Mbendjele Pygmies in the Republic of Congo object to these claims of ownership by others, but see little use in rejecting them publicly since they view the villagers as dangerous but temporary inhabitants of their forest. From their point of view, non-Pygmy people are simply passing through their forest, whereas Pygmy peoples never leave the forest regions.⁵ Indeed, many non-Pygmy communities in the Congo Basin established themselves in remote forest areas due to their immigration in search of employment, minerals or trade, and afterwards remained to cultivate or establish plantations.⁶ Many depend upon Pygmy labour to maintain their plantations today.⁷

Threats for forests, and people

Different groups from outside the forest continue to dominate the bushmeat trade and logging. In recent years, as a result of a complex of factors, but especially urban population growth, the commercial demand for bushmeat has grown, along with the international market demand for African hardwoods.⁸ In most places in the Congo Basin, the exploitation of timber and bushmeat are linked. The introduction of logging is usually

associated with road construction, labour immigration and the development of substantial local infrastructures. Routinely this leads to the emergence of commercial bushmeat trading networks to serve local demand. These almost inevitably become linked to urban markets, resulting in the establishment of networks dominated by traders and professional hunters. These lucrative networks are often controlled by wealthy and powerful elites.

Reports from indigenous communities in Cameroon, Gabon, Central African Republic and the Republic of Congo over the past 5 years suggest that this is leading to steadily increasing competition for forest products between indigenous communities and these urban-based networks, further threatening indigenous communities' forest-dependent livelihoods.⁹ In some areas of the Congo Basin, communities are actively threatened by outside poachers, who are usually armed with high-powered weapons, as opposed to the traditional hunting tools of indigenous Bagyeli or Baka Pygmies.¹⁰

This increasingly intensive exploitation of forest resources by outsiders is escalating threats to forest and wildlife across the entire region. This is having profound negative consequences on indigenous peoples' access to forest and forest resources. Many indigenous communities are now trapped between the competing interests of powerful lobbies from outside their forests. These include international logging companies, who obtain *de facto* control over local development in their concession areas and remove certain key tree resources intensively; commercial meat trading networks who use the logging infrastructure to empty many forest areas of game; unregulated safari operators who attempt to block communities from accessing remaining areas of good forest, and international conservation organisations who have reacted to the very real threats to wildlife by imposing militaristic wildlife protection regimes as a crisis management tool. The result for indigenous forest people is that they find it increasingly dangerous and difficult to get access to crucial forest resources upon which their culture and livelihoods depend.

In relation to logging in the Congo Basin, the colossal power differences between industrial companies and these communities means that forest peoples' concerns are of little consequence for industrialists' decisions concerning the use of forest resources. Logging companies generally obtain rights over forest resources through permission from central government without any need to consult or otherwise involve local forest people in the management of the areas they both occupy. This, despite the resources under industrial exploitation being essential for the survival and well-being of the poorest and most vulnerable groups in the region.

Official responses to the threats

With significant international support over the past decade, national governments have responded to the threats to forest and wildlife by establishing parks, reserves and other types of protected areas. These measures are increasingly backed up by inter-governmental agreements to promote biodiversity conservation.¹¹ This has led to rapid growth of the Congo Basin protected areas network. Across Central Africa,¹² over 450,000 square kilometres now fall into protected areas,¹³ comprising almost 11% of the region; an area the size of Cameroon. The total area targeted for conservation in the Congo Basin by international conservation agencies is almost three times this amount.¹⁴

The significant investment in protected areas by international donors entailed by this strategy has in recent years become coupled with the development and application of

new laws and rules governing access to and use of forests, especially those governing logging.¹⁵ This includes promoting greater accountability in the allocation of logging concessions, along with the introduction of certification schemes for logging operators.

The Forest Stewardship Council (FSC) scheme is one of an array of certification schemes being used to make this happen in the Congo Basin. It is the largest certifier in the tropics,¹⁶ and the most popular in Central Africa.¹⁷ The FSC aims to promote responsible forest management of the world's forests by promoting environmentally appropriate, socially beneficial and economically viable management of the world's forests. FSC inspections and audits are carried out by certifying bodies that are supposed to be independent, but who are paid for their services by the logging companies they audit.

Once FSC certified, logging companies can sell their timber in Europe for up to 30% more per cubic meter. Given the high cost of oil, this extra profit is an important incentive to companies in land-locked parts of the Congo Basin. Additionally, those wishing to continue trade with the European Union are aware that the country in which they operate will have to make a formal agreement with the EU focused on assuring that their timber exports are fully legal. The FSC stamp on their timber guarantees its legality and therefore assures long-term access to EU markets.

The case of *Congolaise Industrielle des Bois (CIB)*, Northern Congo

For the past 5 years, the logging company *Congolaise Industrielle des Bois (CIB)* has been working to meet FSC standards as set out in the FSC principles and criteria.¹⁸ One of their five concessions is now FSC certified. They are working towards certifying their entire operation, covering some 1,300,000 hectares in the Sangha Region in the northern part of the Republic of Congo. With support and guidance from the Tropical Forest Trust (TFT), CIB is taking the spirit of the principles expressed in FSC seriously. This has involved the company in a long-term process of steady improvement in its understanding of the ecosystem it is harvesting from, and on developing procedures that seek to minimise the inevitable impacts of timber extraction on both the forest and the indigenous people who depend upon it. The seriousness of the commitment taken by CIB to achieve FSC principles and criteria has made possible new relationships with the indigenous peoples in their concessions that could become a model for other companies to aspire to.

In the late 1990s, CIB set up a management plan office to coordinate the research required to complete a forest inventory of all their concessions, to systematically develop reduced impact logging procedures adapted to local conditions, and to commission socio-economic studies amongst the approximately 25,000 inhabitants of the area. In addition to numerous consultants with expert knowledge in key areas, CIB employed seven officers and 140 field workers who walked the length and breadth of their 1,300,000 hectare concession for three years counting and measuring over 800,000 trees of commercial interest and mapping forest areas. Faunal inventories indicated the presence of 9,500 forest elephants, 4,000 chimpanzees and 23,000 gorillas and forest zoning protects their key resources. Using specially developed mapping tools, non-literate indigenous peoples are being supported to map their key resources prior to logging in their traditional forest areas, and so ensure their resources are not damaged or removed without their free, prior and informed consent. CIB uses these diverse sources of

information to plan tree harvesting in a way that aspires to minimising disruption to the forest ecosystem and mega fauna, while seeking to avoid damage to key resources for livelihoods or sites of special religious or cultural significance for indigenous people.

Recognition of indigenous peoples' rights

CIB has formally recognised indigenous peoples' rights to their traditional areas and resources everywhere in their concessions, and agreed to establish processes to ensure that timber harvesting will take place only after obtaining their free, prior and informed consent (FPIC). The Tropical Forest Trust has helped CIB to secure World Bank funding for a project to develop mapping tools adapted to the needs of indigenous people, and a radio station that will broadcast in indigenous languages to facilitate information sharing and dialogue. With support from Helveta Ltd, a software company in the UK, the project developed computer mapping tools incorporating iconic software and automated GPS recording processes for use by non-literate people to map their key resources. No literacy is necessary to accurately record the coordinates of key resources that industrial activities threaten.

The community-owned maps produced in this process are a new language by which communities can make their concerns known to company managers. The maps enable company managers to efficiently and systematically incorporate local forest peoples' concerns into their forest management planning and identify any potential areas of conflict for follow-up negotiation and discussion. Where differences in power and language make face-to-face communication difficult and often ineffective, this technology enables both parties' concerns to be considered equally. CIB can now prove that they are respecting the key resources indigenous peoples have indicated to them, and that they are taking the necessary steps to demarcate and protect them from damage during harvesting. In the case of disputes, CIB are in the process of developing a conflict resolution mechanism acceptable to all parties. Outside NGOs have agreed to monitor this mechanism to ensure that conflicts are resolved with the free, prior and informed consent of disputants.

The community-based mapping process that CIB supports will enable all indigenous communities to document their forest use for themselves, in line with FSC principles. The maps provide the community with evidence of their forest use and key resources. Presently, these are used to negotiate with CIB in a meaningful and concrete way. Over time an increasingly detailed map of indigenous forest use in the concessions will emerge that may prove useful in future cases of disputes or competing claims for forest areas. This institutionalized mechanism for documenting community use and protecting it in forest planning is providing a model for the Congo Basin. In Congo, it is contributing to on-going discussions about legal protection for these rights by the government.

Community radio

The planned community radio will seek to bridge the literacy divide and so enable forest-based indigenous communities to become aware of their rights and participate in a dialogue among themselves over their concerns and other issues of interest. Topical radio reports made by members of the indigenous communities in their own languages will promote informed debates that will contribute to equipping them with the knowledge

necessary to engage meaningfully with company managers. Forest managers will be able to use the radio to reliably inform forest people about issues they need to discuss or consider in the course of forest management.

Similarly, whole communities will be able to listen in to what the managers are saying in meetings with other members of their communities, and how their colleagues responded. This will make meetings more inclusive than they could ever have been before and allow all sections of the community – men, women and children – to participate and begin to understand the issues. This seeks to avoid many of the pitfalls associated with imposing representatives on egalitarian peoples and then taking important decisions with them, and hoping they will communicate with the rest of the group they purportedly represent. Much of this is in the process of being realized. But with continuing commitment from CIB, it seems a reasonable expectation to assume that the radio will achieve many of these goals.

Remaining challenges

Other issues remain with the mapping process. Heavy-handed behaviour by ecoguards against semi-nomadic indigenous people has led to a breakdown in traditional forest use. People are frightened to hunt and to visit more remote forest areas. They are frequently searched, threatened and even beaten by ecoguards. This may mean that, despite CIB's best efforts, the indigenous mapping will not be complete, since people may forget to mention resources they have not used for several years. Additionally, although the maps are comprehensible to those community members that helped create them, for many others they remain difficult to read and even confusing. These issues are being addressed, but are not yet resolved.

Some local NGOs have agreed to act as independent monitors of social issues on the CIB concessions. This openness to outside scrutiny led to one of the partners, the *Observatoire Congolaise des Droits de l'Homme* (OCDH) making case studies of some of the abuses people reported ecoguards as having committed. OCDH formally protested to the Wildlife Conservation Society (WCS), responsible for managing the ecoguards. The WCS ran its own investigation into the claims and reported that, as a consequence, they sacked certain ecoguards, are in the process of reforming the system, and have included modules on public relations and human rights in training sessions. Only with continued monitoring will it be possible to tell whether these changes have addressed the problem, or if further action is required.

Although many hurdles remain, the CIB case suggests that when the FSC process is conscientiously followed and its principles seriously applied it has the potential to transform the practice of timber extraction into one of forest stewardship that respects the rights of all key forest users and assures the long-term future of the forest through sustainable harvesting. But the current process is still fragile, depending heavily on the goodwill and determination of certain key individuals to keep the company on-track until the FSC principles are fully digested by all stakeholders, and institutionalized into all of the local management structures.

Is the FSC protecting community rights or not?

The validity of an FSC certificate as a means to ensure that a forest is sustainably harvested and responsibly managed is currently being undermined. While companies such as CIB have made massive financial investments to obtain a robust certificate,

others appear much less committed. Some of these companies, and their FSC certifiers, appear to be cutting corners in order to secure certificates as fast as possible in order to gain quick access to, and a market share of, the high value markets in Europe and elsewhere. The result is a slow slide towards process indicators (i.e., *they are on the right track*) rather than achievement of the standard as expressed in the FSC Principles. This inevitably results in the acceptance by certifiers of a lower standard of proof.¹⁹ The result is what some regard as non-credible FSC audit processes resulting in questionable certificates being issued. In Cameroon, for example, a clutch of European logging companies are rushing along the FSC path, despite a howl of criticism about the very low standards being accepted by FSC certifiers.

This rush towards certification and the consequent downward tumble of FSC standards in the Congo Basin can be partly explained as a structural problem of certification schemes operating in a free market. Since FSC does not represent timber companies, international auditing companies act as the middlemen between the companies seeking certification and the certifying body. These auditors compete with each other to get clients amongst the timber companies. Market pressures are therefore considerable for them to be seen to be successful and to get the companies they audit certified. Otherwise, other potential customers will not want to use their services. In consequence, some auditors appear to be prepared to turn a blind eye to failures to address the more difficult criteria, while the FSC continues to remain silent about the slide in quality in the Congo Basin.

Enough evidence now exists to define what constitutes a robust FSC certificate in the Congo Basin. The FSC needs to be more proactive: working to iron out the unacceptably different standards of auditors, offering clearer guidance to those seeking the certificate, and dealing decisively and quickly when it is clear that there are serious doubts about a certificate that has been granted. The FSC should maintain its standard. Otherwise what is the point of the FSC?

If the FSC loses further credibility amongst Congo Basin stakeholders, then indigenous communities are going to suffer, and the continuing hard work of forestry companies seriously seeking to respect the letter and spirit of FSC principles and criteria will be undermined. As a result, companies seeking FSC certificates will have no incentive to do the substantial work required to address the social responsibility principles and criteria that can have such positive impacts on the recognition of and respect for local forest peoples' rights. What is clear from the CIB case is that when a logging company does decide to do things properly it can herald in massive changes for forest people that were unthinkable a decade ago.

Notes

¹ Population estimates for this region vary widely, with some suggesting up to 50 million forest dwellers in the Congo Basin.

² The term "Pygmy" is sometimes used in a pejorative manner. This is not the intention here. In this article the term is used as a general and widely-understood term to refer to the estimated 500,000 indigenous hunter-gathering and former hunter-gathering peoples who dwell in the forested regions of Central Africa, and are known locally by their own names, such as Baka, Bagyeli, Bayaka, Bambendjele, Babongo, Batwa, Ba'Cwa, Basua, Efe (see map).

³ Due to their socio-economic marginalisation, and their semi-nomadic lifestyle, population data for indigenous hunter-gatherers is very sparse. This figure is based upon data currently available, along with estimates and projections by field researchers.

⁴ For example during the wild rubber trade.

⁵ See **Lewis, 2002**: *Hunter-gatherers and their World*. PhD Thesis University of London, 2002: 208.

⁶ For example, Pokola in northern Republic of Congo, now has a population of over 15,000 people. In 1999 the population was around 9,000.

⁷ In most rural places in the Congo Basin, the phrase “local and indigenous communities” refers to local sedentary communities concentrating on farming, but also hunting, living alongside indigenous, and often semi-nomadic, hunter-gatherer “Pygmy” communities. Many local communities originating from outside their current area recognise that their ancestors arrived to find indigenous Pygmy hunter-gatherers already using the forests.

⁸ Europe and China now dominate this demand.

⁹ Forest Peoples Programme (www.forestpeoples.org).

¹⁰ In and around Campo Ma’an National Park and the Dja Wildlife Reserve, for example (www.forestpeoples.org).

¹¹ For example, the Convention on Biological Diversity, an international treaty committing nations to biodiversity conservation, which has been signed by every Central African country, and which is linked to multilateral funding for the environment sector.

¹² Cameroon, Gabon, Republic of Congo, Democratic Republic of Congo, Central African Republic, Uganda, Rwanda, Burundi only included in this analysis.

¹³ According to IUCN classification categories I to VI.

¹⁴ **WWF, 2006**: *A Vision for Biodiversity Conservation in Central Africa: Biological Priorities for Conservation in the Guinean-Congolian Forest and Freshwater Region*. Washington DC: WWF-US.

¹⁵ The 1994 Forest Law in Cameroon, for example.

¹⁶ **UNECE and UNFAO, 2006**: *Annual Market Review 2005-2006*. Rome: FAO.

¹⁷ Globally the World Bank/WWF Alliance is aiming for independent certification of 200 million hectares under sustainable management.

¹⁸ www.fsc.org

¹⁹ Letter to FSC November 2006 from Friends of the Earth Cameroon, Netherlands, and France; the Centre for Environment and Development, Cameroon; the Forest Peoples Programme, UK, and Greenpeace International.

Jerome Lewis is a fellow of the Department of Anthropology at the London School of Economics. Since 1993 he has worked with forest peoples of the Congo Basin, particularly with Twa Pygmies in Rwanda, Burundi and Uganda, Mbendjele in Congo-Brazzaville and Baka in Cameroon.

John Nelson is Africa Policy Advisor to the Forest Peoples Programme, coordinating its participatory project on Indigenous Peoples and Protected Areas in Central Africa, a support programme for Bagyeli people in the Cameroon oil pipeline zone, case studies of hunter-gatherer forest use in the Congo Basin and FSC certification in the Republic of Congo, and advocacy against the negative impacts of international donor funding on forest communities. He has been working on environment and development issues in Western and Central Africa since 1986, and with FPP since 2000. He resides in the UK, and speaks English, French and Bambara.

The impact of commercial logging and forest policy on indigenous peoples in the Democratic Republic of Congo

Lucy Mulvagh

It is widely recognised that the indigenous hunter-gatherers of the high altitude forests of Central Africa's Great Lakes Region (Burundi, Democratic Republic of Congo, Rwanda and Uganda) were the first inhabitants of the Democratic Republic of Congo (DRC), who were later joined by migrating farmers and animal herders. There are four main groups of these indigenous, so-called "Pygmy", peoples in the vast territory of DRC: the *Bambuti*, *Bacwa*, *Western Batwa* and *Eastern Batwa*. As there has never been a national demographic census, their total number is unknown; however, estimates of the indigenous "Pygmy" population range from 270,000 to four million, which is approximately 0.4%-7% of the total population.¹

Over the years, as the forests were either cut down by agriculturalists or transformed into protected areas by the State and conservation agencies, many forest-dwelling indigenous peoples were forced to abandon their traditional way of life based on hunting and gathering. As they lost their forest refuge due to degradation, expropriation and expulsion, they started to experience increasing prejudice and discrimination from the dominant culture, which despises them for their ethnic "Pygmy" origins.

Racial discrimination against indigenous peoples in DRC

Despite DRC's long-standing ratification of a number of international human rights treaties prohibiting racial discrimination, indigenous peoples living there continue to experience discrimination which transcends that suffered by other groups. The discrimination they suffer takes the form of racial stereotyping, social exclusion and systematic violations of their human and indigenous rights. Indigenous "Pygmy" peoples are typically seen as backward, childish, underdeveloped and immoral by other sectors of society, and are frequently subject to arbitrary arrest, physical attacks and illegal land expropriation. They are considered unable to represent themselves or others, and their participation in DRC's social and political affairs remains disproportionately low.

The indigenous peoples' overall situation is considerably worse than that of the national population in DRC: they experience disproportionately inferior living conditions and limited access to services such as health and education. The poverty and social exclusion they experience create a vicious circle, each reinforcing the other, thereby perpetuating their indigence and marginalisation.

Nature conservation and the violation of indigenous peoples' land and resource rights

Despite its international legal obligations, the Government of DRC does not recognise or protect the rights of indigenous peoples to own, enjoy, control or use their communal lands, territories and resources. Neither has it delimited or demarcated indigenous lands or taken any other effective measure to guarantee and secure indigenous peoples' rights. The customary law of the dominant Bantu society in DRC does not recognise indigenous rights, and indigenous peoples may be dispossessed of their land without recourse. Similarly, under Congolese land law indigenous peoples' lands can be legally classified as "unoccupied" and allocated to others at will.

The forest plays an essential part in ensuring the physical, cultural, spiritual and economic well-being of indigenous “Pygmy” peoples, who suffer extreme levels of poverty and ill-health without it. Most believe their lives would be better if they lived in the forest, as it gives them access to a secure means of subsistence, medicinal plants and the ability to practise their customs. However, the integrity and security of indigenous peoples in DRC is under severe jeopardy due to the creation of protected areas on their traditional lands and territories and the ongoing denial of access to these zones, to the extent that they have become what are known as “conservation refugees”.²

Following expropriation of indigenous lands and forests and the expulsion of indigenous peoples from these areas for conservation purposes, many have become landless squatters living on the fringes of settled society. In order to survive, they have been forced to farm the lands of others in arrangements that are functionally equivalent to bonded labour. These communities have not received any compensation or other reparation for their losses and they continue to be denied access to their lands that have been incorporated into national parks.³

For example, during the 1960s and 1970s, with no prior consultation or consent, hundreds of indigenous families were expelled from the Kahuzi-Biega forest in eastern DRC to make way for a nature conservation area for lowland gorillas. To this day, they have been denied access to the area. Furthermore, they have not been recompensed for the loss of their traditional lands and resources or restrictions on access to the park, and their cultural integrity and well-being has been substantially harmed.⁴

Indigenous peoples expelled from Kahuzi-Biega receive no benefits from the national park and have no participation in park management. Some are employed as trackers, and others are temporarily employed for work such as road building, yet there is no comprehensive plan to address the issue of indigenous peoples’ rights. Indigenous territories expropriated to create the Kahuzi-Biega National Park have become State land on which private activities are prohibited, thereby denying indigenous peoples their right to practise their traditional lifestyle and culture and unilaterally extinguishing their property rights. The indigenous peoples expelled from the Park consider it to be their territory since time immemorial and maintain strong psychological, spiritual and cultural links with the forest. They dispute the expropriation of their lands, and lament their loss even today. Nevertheless, the Park authorities refuse to let them enter, and it is not uncommon for indigenous people to report that they have been shot at or branded ‘poachers’ and harassed or worse should they try to access the Park.

Despite the ongoing fighting that is occurring within DRC, and the land and resource exploitation that surrounds them, several indigenous communities have managed to retain their forest-based hunter-gatherer lifestyle and culture with varying degrees of success. Those indigenous peoples who have done so have avoided the same level of racial discrimination and deprivation that afflicts those who have been forced out of the forest. They are nevertheless facing the same fate in the light of forest zoning plans that, without any regard for their rights, will substantially increase protected areas and commercial forest exploitation pursuant to the 2002 Forest Code and with support from agencies such as the World Bank.

Forest zoning and commercial resource exploitation, and the role of the World Bank

In 2002, DRC adopted a new Forest Code and has subsequently begun adopting a series of implementing laws that put its provisions into effect.⁵ The Forest Code determines how the Congolese forests will be zoned, with at least 40 percent allocated to commercial exploitation and 15 percent to conservation. Although referred to as “protected” in the Code, the remaining forest – at least 45 percent – will also be subject to concessions; however the percentage of forest, if

any, that will be regularised as indigenous-owned remains unknown and is not presently being considered.⁶

While the World Bank has agreed to fund reforms in the forestry and mining sectors,⁷ indigenous peoples' rights are not addressed in relation to these reforms and DRC presently has no effective legal framework to regulate or control the environmental impact of forestry exploitation. According to the World Bank, the zoning plans in DRC could affect at least 300,000 indigenous people and 35 million people in total who live in the forests or rely on them for their survival.⁸ Of great concern is the fact that there was no consultation with or participation by indigenous peoples in earlier pilot zoning projects carried out with the assistance of the World Bank and the UN's Food and Agriculture Organisation (FAO).

Increased forestry exploitation in DRC by logging concessionaires is substantially exacerbating and intensifying the threat to indigenous peoples' physical, cultural, spiritual and economic security, and has already resulted in further dispossession and irreparable harm. Forestry concessions are regularly granted without prior consultation with communities, even when they live within the concession zone. Despite a forestry moratorium of May 2002 that was extended to November 2005,⁹ the State has admitted that logging continued in DRC, with the granting of 103 concessions since the moratorium was put in place (equivalent to 147,426 km² of forest).¹⁰ Moreover, the World Bank predicts a potential increase of 60 to 100 percent in logging in DRC and the creation of a "favourable climate for industrial logging".¹¹ A region equivalent to 60 million hectares (i.e. an area bigger than France) is to be considered as "production forests".¹²

A 2005 Presidential decree states that forestry concession titles granted prior to the adoption of the Forest Code must be "converted" into new titles otherwise the forest will revert back to State ownership.¹³ The implementation of this legislation, also assisted by the World Bank, has been put on hold during the election period, however it poses a further threat to indigenous peoples' rights and livelihoods if the State does not carry out full and thorough consultations with indigenous peoples to ensure their informed participation, establish their customary property and use rights, and delimit and demarcate their lands and territories. Worryingly, there was no known consultation with or participation by indigenous communities prior to the list of conversion requests being published by the State,¹⁴ despite assurances by the World Bank that consultations with indigenous peoples should follow the principles of free, prior and informed consent.¹⁵ At the very least, all concessions granted after the moratorium should be declared illegal and their titles rescinded.

In October 2005, indigenous peoples' organizations filed a formal complaint with the World Bank's Inspection Panel, seeking an investigation of the Government and World Bank activities. Amongst other things, this complaint alleges serious violations of World Bank safeguard policies relating to indigenous peoples and environmental impact assessments. The Inspection Panel's eligibility report notes that the World Bank has recognised that it may have acted too quickly in its support of forestry sector reforms, and that the Bank was not in full compliance with its safeguard policy on indigenous peoples (Operational Directive 4.20).¹⁶ Despite recognising the importance of "reaching out" to indigenous communities, the Bank claims it did not do so because the "forest areas were still inaccessible".¹⁷ The Bank recognised its failure to adequately consult with indigenous communities and the need to "establish more direct lines of communication with Pygmy leaders and communities", and has committed to preparing an Indigenous Peoples' Plan.¹⁸

Following an initial visit to DRC in January 2006 to consider the eligibility of the formal complaint, the Inspection Panel announced that it would carry out a full investigation.¹⁹ Unfortunately a further Panel visit scheduled for May 2006 was postponed, due to reported

insecurity in the run-up to national elections, as was a rescheduled visit in October 2006. The Panel has very recently indicated that it will now schedule its visit for February 2007. The Panel cannot publish its investigation report until after this country visit. At the time of writing this article, there is no indication of what findings the Panel may publish, or what decisions the World Bank Board of Directors will take in the light of the report. As its jurisdiction only extends to the World Bank, however, action is still required to address the State's acts and omissions that have resulted in the threat of immediate and irreparable harm to indigenous peoples in DRC.

Forestry legislation discriminates against indigenous peoples

The 2002 Forest Code is blatantly discriminatory as it fails to recognise the existence of indigenous peoples and protect their rights. It does not recognise or respect indigenous peoples' distinct forms of socio-cultural and political organization and forces them to adopt alien organizational structures in order to obtain title to their lands. Further, it exposes them to the threat of continuing the pattern of domination and coercion by neighbouring Bantu who falsely claim to represent indigenous peoples and their interests.

The provisions governing forestry use rights also discriminate against indigenous peoples and violate their rights to a secure means of subsistence and to freely dispose of their natural wealth. Some provisions state that local communities have use rights for "domestic" purposes only, which constitutes a direct threat to the physical and socio-economic well-being of indigenous peoples who wish to sell or exchange their forest resources, for example to supplement household incomes or provide funding for healthcare. Use rights in gazetted and "protected" forests are extremely limited and fail to recognise or respect indigenous peoples' rights: they do not recognise hunting as a legitimate activity, and prohibit any use other than for domestic purposes. All use rights, including traditional indigenous livelihood and cultural practices such as hunting and fishing, are banned in conservation areas.

There are also several instances where the forestry legislation violates indigenous peoples' rights to judicial remedies and protection and to due process of the law. For example, there is no appeal procedure provided for when adopting gazetting plans or granting forestry concessions on indigenous peoples' traditional lands and territories, and no appeal procedure against forestry concession management plans which may violate indigenous peoples' rights.

The Forest Code clearly indicates the State's desire to prioritise commercial and conservation use of the forests over community forests. It fails to recognise indigenous peoples' ownership of their lands, territories and resources, their rights to collective title and their traditional land tenure systems. It also fails to delimit, demarcate and title indigenous peoples' lands, and to respect and protect their use and access rights.

Despite assurances by the State that there would be active participation by local communities and NGOs in forestry sector reforms,²⁰ to date there has been virtually no public consultation, and public knowledge about the forestry legislation is severely limited. The Code contains no requirements that indigenous peoples should be meaningfully consulted or participate in decision-making, or that the State should obtain their free, prior and informed consent to activities on their lands, particularly with regard to forest zoning and management plans, gazetting and commercial forestry concessions. In fact, there is no such requirement in any other law in force in DRC. The Code's implementing regulations contain multiple additional examples of the State's failure to respect indigenous peoples' rights to participate in decision-making and to give their free, prior and informed consent to activities on their lands and territories, including in the elaboration, implementation, monitoring and evaluation of forestry concession management plans. The elaboration and adoption of further implementing regulations was

suspended during the election period. At the very least, any future such activities that may take place after the elections must include the participation of indigenous peoples and ensure that their free, prior and informed consent is sought in relation to activities which may affect them, their lands, territories and resources.

Conclusion

Indigenous peoples in DRC experience widespread, persistent and systematic racial discrimination and violations of their human and indigenous rights. Their rights to own, control, use and peacefully enjoy their lands, territories and resources are neither recognized nor guaranteed in Congolese law and these rights are frequently violated in practice, especially in connection with the forestry legislation, forestry exploitation and nature conservation.

The failure to recognize and guarantee these rights has led to gross violations of indigenous peoples' human rights, undermining their means of subsistence and severely compromising their physical, cultural and economic integrity. The State has so far been unresponsive to the efforts made by indigenous peoples to resolve questions surrounding their rights. These efforts have included: forming a coalition with several indigenous and international environmental and human rights organisations; submitting a series of complaints to the State and the World Bank; submitting a formal request to the World Bank's Inspection Panel, and subsequent follow-up; and carrying out a series of community consultation and sensitization workshops to inform indigenous communities about the situation and obtain their views. Despite these complaints and other advocacy work, the State has not sought to meet with indigenous peoples' representatives nor has it taken any action to address their concerns in relation to the impact of the forest policy and commercial concessions on their rights.

Indigenous organisations, national and international NGOs should continue their call for positive change in the law and its implementation in DRC to ensure that indigenous peoples' rights are recognized and guaranteed. The State must address the ongoing widespread, persistent and systematic gross violations of indigenous peoples' rights caused by racial discrimination, forestry legislation and resource exploitation. Without urgent action, the lands, territories and resources of indigenous people in DRC will continue to be irreversibly degraded, depriving the affected peoples of the source of their physical, cultural, economic and spiritual sustenance, and threatening their very existence.

This article has been adapted from a submission by Forest Peoples Programme and six indigenous partner organisations to the United Nations' Committee on the Elimination of Racial Discrimination, requesting initiation of an early warning and urgent action procedure to address the threat of immediate and irreparable harm to indigenous peoples in DRC. For the full report, see www.forestpeoples.org.

Lucy Mulvagh is a Project Officer with Forest Peoples Programme (FPP), an international NGO that works in partnership with indigenous, tribal and forest peoples throughout the world to help them secure their individual and collective rights and maintain control of their lands and natural resources. FPP has worked with indigenous peoples in central Africa since 1991 and in DRC since 1998, and has published several reports on the situation of indigenous peoples in this region and elsewhere. Email: info@forestpeoples.org.

Notes

1 The estimate of 270,000 is found in the African Commission on Human and Peoples' Rights *Report of the African Commission's Working Group on Indigenous Peoples/Communities* (2005), page 6; while the estimate of 4,000,000 is found in ARD, Inc. *Conflict Timber: Dimensions of the Problem in Asia and Africa, Volume III: African Cases – Final Report Submitted to the United States Agency for International Development*, Vermont, USA, page 17.

2 The term “conservation refugees” was developed to describe the massive and debilitating impact of conservation activities on indigenous peoples in Central Africa, such as the establishment of national parks, which “puts the rights of nature before the rights of people” and which has resulted in their forcible dispossession and displacement. See: Dowie, M., *Conservation Refugees: When protecting nature means kicking people out in Orion Magazine*, Nov/Dec 2005, available online at: <http://www.oriononline.org/pages/om/05-6om/Dowie.html>.

3 See Lewis, J. and Knight, J. (1995), *The Batwa of Rwanda: Assessment of the Situation of the Batwa and Promotion of Batwa Rights in Post-War Rwanda* (WRM and IWGIA, Copenhagen); Woodburn, J. (1997), *Indigenous discrimination: the ideological basis for local discrimination against hunter-gatherer minorities in sub-Saharan Africa*, in *Ethnic and Racial Studies*, Vol.20, No.2, pp.345-361; Lewis, J. (2000), *The Batwa Pygmies of the Great Lakes Region* (MRG, London); Barume, A. K. (2000), *Heading Towards Extinction? Indigenous rights in Africa: the case of the Twa of the Kahuzi-Biega National Park, Democratic Republic of Congo* (IWGIA, Copenhagen); Jackson, D. (2003), *Twa women, Twa rights* (MRG, London); Nelson, J. and Hossack, L. (Eds) (2003), *Indigenous peoples and protected areas in Africa: From principles to practice* (FPP, Moreton-in-Marsh); African Commission on Human and Peoples' Rights (2003), *Report of the African Commission's Working Group on indigenous peoples/communities* (ACHPR, The Gambia).

4 Barume, A. K. (2000), *Heading Towards Extinction? Indigenous rights in Africa: the case of the Twa of the Kahuzi-Biega National Park, Democratic Republic of Congo*, op. cit.; Nelson, J. and Hossack, L. (2003), *Indigenous Peoples and Protected Areas in Africa: From Principles to Practice*, op. cit.

5 *Loi 011/2002 du 29 Août 2002 Portant Code Forestier* (Law 011/2002 of 29 August 2002, Forest Code). All translations of the 2002 Forestry Code and implementing regulations are unofficial translations by the author.

6 Forest Peoples Programme and Réseau des Associations Autochtones Pygmées (June 2004), *Guide pour la compréhension du Code forestier à l'usage des populations locales et du peuple autochtone 'Pygmée'*, page 10.

7 World Bank, *Democratic Republic of Congo: World Bank Approves US\$90 million Budget Support Operation*, Press Release No. 2006/296/AFR, available at:

<http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/AFRICAEXT/CONGODEMOCRATICEXTN/0..contentMDK:20750090~menuPK:349472~pagePK:141137~piPK:141127~theSitePK:349466,00.html>.

8 Jackson, D. (2005), *Implementation of international commitments on traditional forest-related knowledge: Indigenous peoples' experiences in Central Africa*, (FPP, Moreton-in-Marsh), p. 44.

9 Ministère de l'Environnement et Ministère de Finances de la République démocratique du Congo, *Communiqué de Presse, No. 3519, 1/11/2005*. This Press Release by the DRC Ministries of the Environment and Finance lists 141 existing forestry concessions as at 29 October 2005, of which at least 103 were granted since the moratorium.

10 *Ibid.*

11 Rainforest Foundation UK, *Briefing Paper: New threats to the forests and forest peoples of the Democratic Republic of Congo*, February 2004 citing the following reports: World Bank, *Democratic Republic of Congo, Mission de Suivi Sectoriel, 17-27 April 2002*; World Bank, *Democratic Republic of Congo Mission de Suivi Sectoriel, 1-12 July, 2003*; World Bank, *Democratic Republic of Congo, Mission de Suivi Sectoriel, 17-27 April 2002*. Available at: <http://www.rainforestfoundationuk.org>.

12 *Ibid.*

13 *Décret No. 05/116 du 24 Octobre 2005 Fixant les Modalités de Conversion de Concession Forestière et Portant Extension du Moratoire en Matière d'Octroi des Titres d'Exploitation Forestière*.

14 By February 2006, 73 title holders requesting 235 concession conversions had been registered. See République démocratique du Congo, Ministère de l'Environnement, Conservation de la Nature, Eaux et Forêts, *Communiqué Officiel No. 001/CAB/MIN/ECN-EF/2006, 02/02/2006*.

15 Letter from Mr. John McIntire, Sector Director, Rural, Environmental and Social Development, African Region, World Bank on “World Bank involvement in the forest sector of the Democratic Republic of Congo” to Mr. John Buckrell, Global Witness, 4 April 2006.

16 The Inspection Panel, *Report and Recommendation on Request for Inspection, Democratic Republic of Congo: Transitional Support for Economic Recovery Credit Operation (TSERO) (IDA Grant No. H192-DRC) and*

Emergency Economic and Social Reunification Support Project (EESRSP) (IDA Credit No. 3824-DRC and IDA Grant No. H064-DRC), undated, paras. 47, 25 and 41.

17 *Ibid*, para. 48.

18 *Ibid*, and para. 41.

19 *Ibid.*, para. 66.

20 See, for example, République démocratique du Congo, Ministère de l'Environnement, Conservation de la Nature, Eaux et Forêts, *Forum des Nations Unies sur les Forêts, Rapport National 2004*, 13 janvier 2004, Point A.2 (page 9), Point A.3 (page 11).

INDIGENOUS FOREST PEOPLES OF GABON FACE UNCERTAIN FUTURE

Judy Knight

« Pour Moi, la culture est un pivot essentiel de notre être et de notre développement. Notre pays est riche de sa diversité et de ses talents, encore faut-il considérablement les mettre en valeur »

(“In my opinion, Culture is an essential pivot for our wealth and our development. Our country is rich from its diversity and its talents, nevertheless, we need to value and use these effectively”)

President Bongo, Presidential Election Programme 2005 (Bongo 2005)

Gabon covers an area of approximately 26.7 million hectares and maintains some of the largest remaining rainforest in West Africa. Although the actual extent of forest cover is unknown, experts estimate between 17-22 million hectares, or 85% of the total land mass (Christy et al 2003). Indigenous hunter-gatherer communities (known variously as the Baka, Bakoya, Bagama, Babongo, Akoa, etc.) are located throughout Gabon, and include numerous ethnic groups separated by locality, language and culture. According to the most recent census (Massandé 2005), the Pygmy populations number as many as 20,005 out of a total national population of approximately 1,400,000 (previous estimates 7,000-10,000). Due to colonial-initiated “*regroupement*” (resettlement) programmes¹, many of these communities have settlements by the roadside, yet their livelihoods and cultures remain inextricably tied to the forest areas of the country. The roadside settlements form a part of wider settlement patterns that cross the forest landscape (Knight 2003). Forest peoples hold a unique position in wider Gabonese society as a result of their specialist knowledge in forest resources. With the current trends in timber extraction, and the anticipated ecological and social effects, this knowledge base and their way of life are severely threatened.

Recent logging trends in Gabon

With oil production decreasing, and a series of economic problems in the 1990s, the pressure is on the national economy to intensify commercial logging and mining developments as well as tourism stemming from the newly established national parks. The government is currently occupied with complicated legislative procedures to support these developments to carve out large parts of the country, including previously unaffected state land into concessions, protected areas and rural forests, reserved for rural communities who can obtain revenues either by logging themselves or by renting out to logging companies. Widespread infrastructural developments are underway. An example of this is the government’s recent decision to sell iron mining rights to a Chinese company in Belinga and, in this connection, construct a new railway line that will open up the north-east areas of the country for further exploitation. In this region, local people were already suffering in 2003-4 with the huge influx of 15 logging companies operating in an area which had no previous forestry activities. Fighting erupted within communities and families, rural roads were ruined, hunting and trapping became difficult for some and enhanced for others (Lahm 2006, personal correspondence).

The UN Food and Agriculture Organization (FAO) estimates that, at the present rate of clearing, Gabon will lose half its forests over the next 100 years. According to leading conservationists in the area, the current concern is loss of forest quality rather than forest loss. While deforestation in the country is not widespread at present, this could present a threat in the near future (De Wachter 2006, personal communication).

The country's concessions have more than doubled in the last ten years and recent maps show expansions to include the last intact primary forests in the country, such as the Minkébe forest mountain range, in the north-east. While some of this area is now protected as a national park, a significant segment is currently under a 15-year industrial logging permit and is known to contain Fang and Baka settlements, including ancestral lands of Baka presently living in Gabon and Cameroon. Local villagers report increasing noise levels and wildlife (in particular elephant) disruption (Mve Mebia 2006, personal communication). These concessions are not delineated or allocated with the consultation of local representatives or with respect to local peoples' traditional territories.

More than half of the total area under timber concessions is allocated to foreign companies that are partially or wholly owned by foreign interests (pre-dominantly French) and focus on the exploitation of a single species: Okoumé. The timber industry is the second largest source of state income from natural resources - Gabon produces over 2 million m³ of timber per year - and it is the largest employer (World Resources Institute 2000; Oliver and Fripp 2005; Cassagne et al 2005). The last decade has seen a sharp increase in Chinese log-export markets and an influx of Sino-Malaysian logging companies, typified by more generalised, intensive cutting, and poor environmental standards. In 2005, during the preparation of the Forest Environment Sector Programme, discussions were held between the World Bank and the government on the propriety of forestry concessions. While certification procedures and management plans are underway within many of the major foreign companies, the costliness of this process has meant that it has been avoided by many private concession-holders in favour of "fermage" (sub-leasing of exploitation rights within concessions to other companies), often with short-term interests and no regard to legality or process (Cassatta 2006, personal communication). Transparency and law enforcement continue to present major challenges in the forestry sector. Amid these developments, the future of indigenous hunter-gatherer populations is uncertain.

Logging threatens indigenous forest peoples

The situation echoes a disturbing trend. All across Central Africa, economic and environmental processes are eroding indigenous peoples' lands, livelihood and traditional knowledge in the name of "development". These peoples are often deprived of their rights by governments who do not treat hunter-gatherers as equal citizens or respect their traditional way of life. Through the expropriation or depletion of their traditional lands and consequent loss of autonomy, communities are increasingly being forced to assimilate into wider society from a position of vulnerability. In Gabon, the Akoa of Estuary province, have become so few and dispersed due to logging and tourist developments over the last century that they are virtually extinct as an ethnic group. Where they do exist, many deny their true identity to avoid discrimination in the urban context.

The forest peoples in rural areas are tied up in these processes, and often employed by logging companies as guides or labourers. Many of the Babongo in the Massif du Chaillu recount their migration patterns as being the result of escaping pressures of resettlement and following logging companies in search of employment. However, they assert that the intensive extraction associated with Sino-Malaysian companies operating in the area now reflects a very new era in logging and its effects on the landscape. Much of the logging has been aggressive, and Babongo camps and villages once located in the forest (four years ago), are now next to roads. As one Babongo man put it:

"The Malaysians don't employ us...they have spoilt the area. They didn't pay attention, they even cut down our Mutombi (sacred trees) and the animals have gone; yet if they don't come back who will maintain the roads for us?" (Babongo man, Massif du Chaillu, 2005).

In 2002, logging concessions in this area were reclaimed as part of the establishment of Waka National Park, an area singled out for possible eco-tourism ventures involving local populations. Prior to the logging company's departure in 2004, an intense season of extraction led to considerable environmental damage. When they eventually left, there was an increase in local logging to sustain monetary income.

Access to forest resources

According to Gabonese law, access to the forest is not prohibited but land is owned by the state. Formal permission to establish villages and plantations is not required in the countryside and land-use rights are recognised both between villages and by the State. Legislation recognises a “*Zone d'Exploitation forestière villageoise*” (Villagers' Zone for forest exploitation) whereby logging is forbidden on a band of 5km around an occupied village or roads (HEBDO 1993; Decree No 1205/PR/mefpe dated 30 August 1993). However, the area exploited for hunting and gathering invariably extends much further than this. Camps and “deserted villages” may be seasonally occupied and thus appear unoccupied at any given moment. As land rights are based on fixed association with place, the high levels of mobility characteristic of the lifestyles of forest peoples and Gabonese rural communities would make many potential land claims difficult to implement. Local hunting is not illegal in logging concessions. However, problems occur when forest peoples' skills and knowledge are exploited by middlemen in the commercial bush-meat trade, in particular large-scale elephant poaching.

Environmental initiatives

Gabon is party to many of the international human rights instruments and, alongside all the countries in Central Africa, ratified the Convention on Biological Diversity (CBD) in 1992 (known as the Rio Convention). The CBD affirmed that there is a direct relationship between the world's cultural diversity and biodiversity, and thus recognized that there is an urgent need to safeguard traditional peoples' lifestyles and knowledge of their environment as part of the conservation process.

In 1993, the Government of Gabon, under pressure from international bodies concerned with conservation interests, launched the *Projet Forêt Environnement* (PFE) resulting in an ambitious policy of sustainable forest management in the forest concessions, placing them at the forefront of Central African initiatives. Information resulting from the PSE was used to prepare new forestry laws to revise or replace those already in existence. A new forest code, elaborated in consultation with the forest sector (logging companies and conservation bodies) was adopted in December 2001. These conveyed the government's adherence to various resolutions and international conventions on sustainable forest management and, at the same time, aimed to accelerate industrialisation of the timber sector in order to increase the long-term benefits for the national economy. No provisions were made in this new Forest Code, or the National Forest Action Plan (NFAP), to ensure forest peoples had representation in provincial or local committees or to safeguard inevitable problems of encroachment by neighbouring groups. Indigenous peoples' rights were also ignored in the 1999 National Biodiversity Strategy and Action Plan (which followed Gabon's ratification of the CBD). In 2001, the New Partnership for African Development (NEPAD)² (of which Gabon is a partner) initially produced a forest plan that included benefits for indigenous peoples. This was later eliminated in December 2003 in their list of priority environment projects (Jackson 2004).

Local NGOs and indigenous self-organizing

Local NGOs in the environmental sector, such as *Aventures sans Frontières*, Gabon Environment, *Les Amis du Pangolin* and Brainforest tend to support conservation initiatives and policy through research, fieldwork, environmental education and lobbying, as well as exposing illegal practices that threaten the conservation process through their own

newspapers and websites (Ono Essangui 2006, personal communication). One example was the recent case whereby commercial incentives resulted in the government overlooking the destructive and illegal dynamite activities of a Chinese mining company in Loango National Park, illustrating how conservationists are financially powerless to compete with these processes. In the last five years, a number of NGOs have been established with the aim of promoting traditional culture and protecting the Pygmies. The majority of these organisations do not have indigenous representatives.

The indigenous rights movement in Gabon is relatively recent and started through the work of Leonard Odambo, founder of, MINAPYGA (*Minorités des Autochtones Pygmées du Gabon*, 1997). An educated Bakoya from Mekambo, North-East Gabon, and a controversial journalist, Odambo's primary aim, to date, has been to bring the dialogue into the public domain and to raise awareness at the national and international level of the plight of indigenous forest peoples in Gabon, in particular the effects of logging and resettlement programmes and the need to combat growing levels of discrimination and poverty in rural areas. Odambo has published widely and attended several sub-regional and international indigenous and environmental forums and conferences. Recently, the organisation has been funded by UNESCO and foreign embassies for specific projects on cultural promotion, literacy and agricultural development. Consequently, grassroots structures and leadership have strengthened. MINAPYGA has, to date, no permanent partnership or external support that secures its basic running costs and allows it to achieve its full potential as an organisation to represent forest peoples' rights at the national level.

Another indigenous organization, Edzengui (the name is taken from a Baka guardian spirit), was founded in 2002 by Mme Helene Nze Andou, a Baka from Minvoul (an area near the northern border of Minkébé National Park) in close collaboration with WWF. Edzengui's partnership with WWF forms the focus of their present work and consequently there is a strong conservation agenda. The main focus is to find strategies to respect traditional elephant hunting as a core cultural activity and to combat Baka involvement in large-scale commercial elephant hunting in the northern areas. Edzengui recently received funding from CARPE³ and the European Union for culture, conservation, environmental education, agriculture and health projects.

Association pour le Développement de la Culture des Peuples Pygmées du Gabon (ADCPPG) was founded in 2003 by Denis Massandé, a Babongo-Mitsogho from central Gabon, and is the newest indigenous organisation. ADCPPG's aim is to promote Pygmy rights in the country's development process and believes that the fragile situation of the Pygmies in Gabon has to be addressed through the establishment. The ADCPPG was a very active supporter of the Presidential campaign in 2005 and, in December 2005, achieved an audience with the President, facilitated through an earlier meeting with the Prime Minister (June 3, 2004). During these meetings, plans were made to carry out a baseline survey of all current Pygmy populations in Gabon to facilitate resettlement programmes and micro-projects. Mr. Massandé has collected population figures on the Pygmies of Gabon and also started work on mapping of traditional territories to promote Babongo community forests. Another audience with the President is in preparation with key stakeholders, to discuss national park management plans, sustainable community-based forestry and the new national park law in relationship to customary land tenure (Massandé, personal communication 2006).

Linkages are developing between Gabonese indigenous organisations and hunter-gatherer groups across Central Africa. Two of the leaders hold regional positions in the Indigenous Peoples of Africa Co-ordinating Committee (IPACC) and have attended meetings focusing on capacity building, strengthening leadership capacity and participation in the policy process, including at the UN level. UNICEF is currently funding a nation-wide programme called *Projet d'Intégration au Milieu Pygmée*, involving the participation of indigenous and local NGOs and national and regional government representatives.⁴ All the indigenous organisations lack the basic funding and support essential for their development within Gabon.

World Bank influence on forest policy

According to Jackson (2004), where legal and policy provisions for the protection of indigenous peoples' rights and their forest-related knowledge do exist in Central African countries, the way that they have been implemented in practice has hitherto had little impact. As these countries rely upon international financial assistance to develop their national economic development programmes, this may change. Recent developments in the region show that the World Bank's Operational Directive on Indigenous Peoples (known as OD 4.20) may have the potential to influence national policies in such a way that indigenous peoples' interests are asserted with regard to benefit sharing and gaining compensation from the development process.

With World Bank support, Cameroon, Gabon, the Republic of Congo, the Central African Republic, DRC and possibly Angola have recently started developing Forest Environment Sector Programmes (FESP or PSFE) as frameworks within which to coordinate legislation, strategies and planning, and to give greater emphasis to social concerns. The FESP itself does not mention indigenous peoples but it has triggered the World Bank's safeguard policy on indigenous peoples (OD 4.20), which requires an Indigenous Peoples' Plan (IPP) to be prepared to ensure that indigenous peoples benefit from development projects, and to avoid potential negative effects such as the Twa evictions that occurred as a consequence of the establishment of Bwindi and Mgahinga National Parks in Uganda in 1991.⁵ International funding such as the World Bank's Global Environment Facility (GEF) served to facilitate these processes rather than provide protection or compensation (Jackson 2004, Nelson 2003).

In 2005, Gabon (second after Cameroon) agreed to its own Indigenous Peoples' Plan (IPP). The Indigenous Peoples' Plan, as part of the Forest Environment Sector Programme⁶, is a national programme designed to streamline and coordinate all stakeholders' and partners' involvement in the natural resource management of the country and forms a key document in the framing of future policy. The Indigenous Peoples' Plan contract is attached to a development policy loan of U\$15 million whereby Gabon risks losing the next instalment if key activities (indicators) are not achieved (for example, demarcation of land for indigenous peoples, compensation for land loss, access to traditional lands, capacity building and participation of indigenous representation in the Forest Environment Sector Programme).

The Indigenous Peoples' Plan document is a transparent summary of the present state of knowledge on the situation of the forest peoples of Gabon, where risks are identified in relationship to wider society and development processes, and a strategic plan has been negotiated to achieve the goals of the Forest Environment Sector Programme for indigenous peoples. The objectives, strategic plan and timetable of the Indigenous Peoples' Plan are ambitious and include achieving equal rights for forest peoples in a number of areas: legal, technical, financial, organisational and cultural.

The primary achievement of the Indigenous Peoples' Plan is Gabon's official recognition of the existence of, and responsibility towards, its indigenous populations in all forest-related issues, along with the process of creating the Indigenous Peoples' Plan, which facilitated new channels of communication between the major stakeholders. The document provides standards and guidelines for all stakeholders, including those who previously had no official policy on indigenous peoples. The Indigenous Peoples' Plan was initially met with some opposition but nevertheless brought together indigenous organisations, NGOs, government officials and conservation organisations, and encouraged dialogue between these various stakeholders. This has resulted in a new level of communication between the government (Ministries of Environment and Planning) and all three indigenous leaders that continues to be respected as the Forest Environment Sector Programme plans progress.

One of the biggest challenges posed by the Gabon Indigenous Peoples' Plan will be the interface between National Park Laws and park-specific management regulations. The Indigenous Peoples' Plan states that the government should recognise and protect the land-

use areas of indigenous people, especially within national parks and protected areas, in order to legalise access and utilisation: “subsistence as well as income gathering” (Schmidt-Soltau 2005). This statement contradicts the new National Park law, which awaits endorsement by the state.

One year after these developments, the Indigenous Peoples’ Plan is delayed, just like many other components of the Forest Environment Sector Programme, due to discussions between the government and the World Bank. These discussions have to be resolved if the loans are to be finally approved. The recent Sino-African Summit in Beijing reconfirmed growing Chinese economic interests and investment in Africa. Gabon is one of China’s main sources of timber. As well as the long-term environmental threats posed, these processes risk lessening the leverage of environmental and social safeguards stipulated in the loan conditions of long-standing partners such as the World Bank.

In Cameroon, twelve years after community forests were legalised, and three years into the Indigenous Peoples’ Plan, despite identifying risks and measures to safeguard indigenous peoples’ interests, little progress has been made in this area. Pygmy communities’ interests continue to be ignored and tighter control on forest management has precipitated large-scale illegal logging activities affecting traditional land and resources.

Future perspectives

“I worry, in a hundred years from now; will a Koya still be a Koya, when the forest has gone?”(Odambo 2006, personal communication).

If current economic developments are to come into line with national goals to promote and give value to cultural diversity, models of development need to be widened to enable hunter-gatherers to achieve equal opportunities to state benefits without losing their knowledge, culture and identity, all of which are inextricably linked to tenure of their traditional forest lands. So much depends on timing and what progress can take place under the current government. At present, Gabon is fully committed to exploiting its forest resources for commercial purposes. Current efforts to assist hunter-gatherers, such as the UNICEF integration programme, support this process in concentrating more on civil development, resettlement and integration rather than taking concrete measures - beyond dialogue - to safeguard traditional tenure, knowledge and livelihoods. As national park policies are still in the drafting process, it is still not clear whether park management plans will actually recognize indigenous peoples’ tenure and use rights.

References

Bongo-Ondimba, Omar, 2005 : *Mon Projet, des Actes pour le Gabon*, Multipress Gabon Libreville.

Christy, P., R. Jaffre, N. Ntougou, C. Wilks, C 2003 : *La Forêt et la Filière Bois au Gabon. Projet Aménagement forestier environnement*. Ministère des Affaires Etrangères et Ministère des Eaux et Forêts, Gabon

Jackson, D., 2004 : *Implementation of international commitments on traditional forest-related knowledge: Indigenous peoples’ experiences in Central Africa*. Forest Peoples Programme. Paper commissioned by the International Alliance of Indigenous and Tribal Peoples of the Tropical Forests for presentation at the Expert meeting on Traditional Forest-Related Knowledge (TFRK), 6-10 December 2004 in San Jose, Costa Rica.

Jackson, 2003: Indigenous Advocacy in Central Africa. In: *Indigenous Affairs* no. 4/03, IWGIA, Copenhagen.

Hebdo-Informations : Journal hebdomadaire d'informations et d'annonces legales

1993 : *Décret définissant les zones d'exploitation forestière*. No 153

2002 : *La Politique des Parcs Nationaux*. No 463-14.

2002 : *Le Code Forestier*. No 452-16

Massandé, D., 2005 : *Organisation Territoriale du Gabon Démographie Chiffres Des Peuples Autochtones Pygmées de Gabon*. ADCPPG report, 30 June 2005.

Worlds Resources Institute and Global Forest Watch, 2000: *A First Look at Logging in Gabon*. WRI, Washington DC.

Oliver, R. and Emily Fripp, 2005: Changing International Markets for Timber - What can African Producers Do? Producer Country Draft-Gabon. In: *Changing International Markets for Timber-What can African Producers Do?* African Timber Trade Forums May-July 2005: Ghana, Cameroon, Gabon and Congo. Trade Forum Report. TTF and IFIA.

Cassagne, B. and Jean-Francois Chevalier 1. (2005) What Sustainable Management for the small forestry concessions in Gabon? In: *The ATIBT-The Tropical Forest Enterprise Newsletter*, Winter 2005-No 21. ATIBT, Paris.

Knight, J., 2003: Relocated to the Roadside: Preliminary Observations on the Forest Peoples of Gabon. African Monographs, suppl. 28. Sept 2003. Kyoto.

Nelson, 2003 After the World Parks Congress: Rights of Indigenous Communities Still at Stake in Central Africa. In: *Indigenous Affairs* no. 4/03, IWGIA, Copenhagen

Pourtier, 1989 : *Le Gabon*. Tome 1: Espace-Histoire-Société. Harmattan, Paris.

Schmidt-Soltau, K., 2005 : *Programme Sectoriel Forêts et Environnement (PSFE) Plan de Développement des Peuples Autochtones. Rapport Final*. July 2005. World Bank, Washington.

Judy Knight is a Consultant Anthropologist based in Gabon. She has been working with Central African indigenous forest communities since 1992, including projects coordinated by FPP, UNESCO, IPACC and international embassies, and has worked in consultation with indigenous NGOs and major conservation organisations on indigenous peoples' rights and the safeguarding of traditional forest-related knowledge, in and around protected areas.

Notes

¹ "Regroupement" literally means the bringing together of previously dispersed communities (in this case, forest-based) to form larger settlements strategically placed next to transport routes, administrative posts and state amenities. The term refers here to a series of official policies that occurred as early as the 1930s in Gabon, and into the post-colonial period through to the 1980s, resulting in numerous ethnically diverse rural communities being forcibly relocated to the roadside. These developments went hand in hand with the territorial and economic control of the country and laid the foundations for the modern state system (Pourtier 1989).

² NEPAD is a programme of the African Union concerned with the sustainable development of Africa. Its objectives are set forth in the NEPAD strategic framework document for Africa, July 2001. The highest authority of the NEPAD implementation process is the Heads of State and Government Summit of the African Union. In Gabon, it comes under the *Ministres de Commerce et du Développement Industriale chargé du NEPAD* and has been involved in creating policy statements of intent on all areas of economic development. With the financial support of the IUCN, NEPAD has been involved in managing ministerial meetings concerned

with, for example, the revision of the Forestry Code 2001 and, in March 2004, indigenous representatives were invited to participate in the *Séminaire: Implication sur la société civile sur le NEPAD*, held in Libreville.

³ CARPE is short for the Central African Regional Program for the Environment, a USAID initiative. CARPE funding is part of the WWF International Congo Basin Initiative, of which the Minkébé National Park is a component. The Project *Communauté, Conservation and Validation du Parc National Minkébé par le communauté Baka* took place August-October 2006.

⁴ The aim of the project is to provide all the Pygmy population with birth certificates, vaccinations and hygiene advice by February 2007.

⁵ Cameroon has agreed to Indigenous Peoples' Plans (IPP) for the Forest Environment Policy Development Programme (PSFE) and National Community Development Support Program (PNDP) (2003). In the Republic of Congo, DRC and the Central African Republic, the FESP are in the draft stage.

⁶ In Gabon, there is a FESP and a GEF project in support of national parks and one IPP that covers both. The FESP is supposed to become operational early next year, while the GEF project officially started in June.

Mau Forest: Killing the goose but still wanting the golden eggs

Kanyinke Sena

The Mau forest complex measures approximately 400,000 hectares. It is the largest block of forest cover in Kenya. Located in the central parts of the Rift Valley province, Mau is a key water catchment area and the source of 14 out of 15 major rivers found in the western side of the larger Rift Valley, which runs almost across Africa. The forest feeds 5 major lakes, three of which are cross-boundary. Among the lakes is Lake Victoria, shared by Kenya, Tanzania and Uganda. Named after the former Queen of England, Lake Victoria is the world's largest tropical lake and the second largest freshwater lake.

Mau forest is also key to 8 conservation areas, including the Lake Nakuru National Park, which has been declared a Ramsar site.¹

Among the conservation areas that depend on the Mau forest are the world famous Maasai Mara and Serengeti game reserves. The Serengeti game reserve is found in northern Tanzania and is a world heritage site. In Kenya alone, over 5 million people and millions of domestic and wild animals depend on the Mau for water. Mau forest is a trust land managed by five local authorities on behalf of the communities that live adjacent to it. The five local authorities are Nakuru, Koibatek, Kericho, Bomet and Narok county councils. However, the forest has been home to the Ogiek people since time immemorial. The term "Mau" is borrowed from the Ogiek word "Moou" which means "the coolest of the coolest place".

Biggest threat: logging

Logging in the Mau forest must be understood against the background of forest excisions whereby the government periodically hives off large chunks of forest land, ostensibly for "landless" Kenyans but actually for distribution to powerful, well connected individuals. Under Kenya's Forest Act, which was in force from colonial times until mid-2005, when a new forest law was enacted (read more about this below), all forests belonged to the state and were managed on its behalf by the Forest Department. By all accounts, the Forest Department has made a mess of managing forests. Huge chunks of forest areas were routinely excised. During the colonial period, and for a couple of decades after independence, large chunks of the Mau forest were destroyed in order to establish tea plantations in the parts of the forest under Kericho and Bomet county councils. This resulted in the largest tea-growing areas in Kenya being found within the forest.

From 1973 to 2003, 36,780 ha were lost in the Eastern Mau forest and, as recently as 2001 for example, the government excised over 67,000 ha for logging and to settle agricultural communities. Excisions have also taken place in various other parts of the forest, including the Transmara area where, in a Gazette Notice of 3 March 1989, 937.7 ha were set aside for timber and tea plantations. The gazette notice was not accompanied by a legal notice - a mandatory requirement. From 1996 to 2003, over 30% of the Maasai Mau forest was lost to logging and agricultural activities. Maasai Mau measures approximately 46,278 ha.

Excisions continue to this day for political reasons. With the next scheduled elections in December 2007 fast approaching, the government, through the Ministry of

Lands, is considering excising a further 7,000 ha from Maasai Mau for the settlement of “landless” potential voters. The government action is illegal, against the well-being of the country’s environment and the economy, and will definitely result in conflicts of jurisdiction and interests between the Ministry of Lands and the Ministry of Environment and between the central government and local authorities.

Ban on logging not respected

In the year 2000, Kenya had around 1.7 million hectares of indigenous forest. This constituted around 30% of its land mass, according to UN Food and Agriculture Organization (FAO) figures.² This assessment reckoned that the country lost 93,000 hectares during the 1990s. The loss has been linked to severe water shortages and famine in the country.

Nearly five years ago, the government imposed a ban on logging in order to curb deforestation and to conserve the country's major water catchment areas. Despite the ban, there is alarm at the rate at which the country's forest cover continues to be depleted through logging activities. Camphor and cedar trees, which produce prized varieties of wood products are said to be particular targets for loggers. Other types of wood are also used for carving artefacts for the tourism industry.

The Mau forest complex is the most heavily logged forest in Kenya. When the government imposed the ban on logging in the country, it exempted three multi-national logging companies: Pan African Paper Mills, Raiply Timber and Timsales Ltd, the biggest loggers in the Mau forest. According to government explanations, the three firms were exempted because Raiply and Timsales employ over 30,000 Kenyans, while “the government has shares in [the Pan African Paper Mills] and it is important to the economy,” explained Kimaiyo Towett, a leading Ogiek activist. While the ban subsists, the three companies continue to cut down thousands of trees every month from Eastern Mau for the national and Middle East market.

On 20 August 2006 for example, Ms Letitia Zobel, a UNEP (United Nations Environment Programme) policy adviser visited the Mariashoni area of Eastern Mau. “In the one hour that I stood there on a Sunday morning, I counted 7 ten-ton trucks ferrying logs to the three companies’ plants in Elburgon town,” she explained in shock. “The swamp that is the source of the Mara River is drying up!” she added. The Mara River waters both the Maasai Mara and Serengeti game reserves and drains into Lake Victoria.

Eastern Mau is also the water catchment area for Lake Nakuru, which supports one of Kenya’s most visited wildlife parks with the biggest concentration of flamingos in the world. In a press conference on 17 August 2006, the Director of Kenya Wildlife Service and the top civil servant in the Ministry of Environment expressed concerns that, at the current rate of Eastern Mau forest destruction, Lake Nakuru would no longer be there in 20 years' time. Ironically, a major daily newspaper featured a leading story the next day in which forest and other government officials in Nakuru district were demanding that loggers immediately pay the US \$ 450,000 royalty fees they owed the government for timber harvested in Eastern Mau. The officials particularly accused a local politician of owing the government in excess of US \$ 115,000 in logging fees royalty arrears! Both Lake Nakuru and Eastern Mau are located in Nakuru district. By allowing logging that is destroying one of Kenya’s prime tourist destinations, the government is systematically chopping off the hand that feeds it.

Logging activities are also rampant in other parts of the forest. Logging in parts of the forest found in Kericho district is undertaken to supply the tea industry. Tea factories daily need undocumented large quantities of timber to roast tea leaves. In Maasai Mau, logging is mostly done by small-scale poor locals desperate to put food on their tables. But when small-scale loggers are many, they add up to something big. In a 2005 report prepared jointly by UNEP, Kenya Wildlife Service, Kenya Forestry Working Group and Ewaso Nyiro South Development Authority on the status of the Maasai Mau, “logging was so intense in the western parts of the forest that it was impossible to count the number of trees cut. In the eastern part, some 2,343 recently logged indigenous trees were counted, in addition to some 573 hectares on which logging was so heavy that individual trees logged could not be counted,” stated Mr. Koriata, the then Principal Administrative Officer of Narok county council. The government authorities in Narok district, where the forest is found, are alleged to be deeply involved in the logging activities. The biggest culprits are said to be officials from the forestry department and Narok county council. But when they take action and arrest a few private loggers and impound their timber, the court fines are small and not an effective deterrent. The impounded timber is often channelled back into the black market by the very same government officials who impounded it.

The Ogiek peoples

The Ogiek peoples are a hunter-gatherer community. They have been living in the Mau forest since time immemorial and there is no historical or anthropological evidence to disprove their claim. Honey, wild fruits, roots and wild game, selectively and sustainably hunted, formed their diet. To Mr. Peter Cheruyiot, a fellow in the UN Indigenous Fellowship Programme, “the Ogiek are the forest and the forest is the Ogiek people.” Their traditional honey economy demands the protection rather than the destruction of forests. “For every beehive, we need a tree to hang it. So if we want 1 million beehives, that means 1 million trees,” adds Mr. Kobei, the Executive Director of the Ogiek Peoples’ Development Program. But like other forest communities in Kenya, the Ogiek peoples are not recognized as distinct and separate peoples. The non-recognition begun way back in the 1930s when the colonial government constituted a land commission headed by a Mr. Carter to look at land issues in Kenya. The Carter Commission considered that forest peoples were “barbaric savages who should be assimilated into the communities they neighbour.” Post-colonial governments have continued this policy of non-recognition and assimilation in the name of national unity. This has led to political, social and economic marginalization and domination of hunter-gatherer communities by agricultural and, to some extent, pastoralist communities. This is despite the provisions of various instruments, including the African Charter on Human and Peoples’ Rights, which Kenya has ratified. Article 19 of the African Charter states that “Nothing shall justify the domination of a people by another.”

The Ogiek peoples have consistently attempted to protect the Mau forest by all legal means. In East Mau Forest, there has always been conflict between the government and logging companies on the one hand, and the Ogiek people and organizations supporting them, on the other. The Kenyan government frequently forces the Ogiek out of the forest, insisting that the area is environmentally protected under the country's

Forest Act. But, at the same time, it is allowing powerful logging companies to cut down trees in the forest. For years, Ogiek representatives have been asking the government to take action to protect them. In 1997, when these requests continued to prove unsuccessful, the Ogiek went to court to stop Kenyan officials from surveying and allocating Ogiek land to others. The Ogiek's lawsuit eventually went to the Kenyan High Court, which dismissed the case in March 2000. Several other cases by the Ogiek against the government have also been dismissed by the courts. In the few instances that the courts have ruled in favour of the Ogiek, the government has simply ignored the courts' decisions. By defying its own courts, Kenya's government has shown a callous disregard for the rule of law.

The Forest Act of 2005

Prior to the enactment of the new forest law in 2005, the old forest law had been in place since colonial times. It championed an exclusionist policy whereby forests were owned and protected by the state through forest officers assisted by warders with guns to keep forest communities out. The law prohibited entry into forest areas, as well as use of forest produce. Hunting was also completely banned under express provisions contained in the Wildlife Act. These laws thus effectively criminalised the traditional lives of hunter-gatherer communities. Successive post-independence regimes did not do much to change the situation, despite Kenya having ratified various international conventions, including the Convention on Biological Diversity (CBD).

The new Kenya Forest Act of 2005 was enacted to improve the forestry situation in Kenya and address international commitments that Kenya had entered into, especially the Convention on Biological Diversity. Although the new forest law is not anything to write home about, it is a major improvement compared to the old forest law. It provides for community management of forests and for traditional hunter-gatherer communities to practise their customary lifestyles inside forests. It also allows forest communities to use forest products for purely consumption purposes. But despite these windows of opportunity for hunter-gatherer forest communities, the Act has several shortcomings. Just as before, it will be the government that has the final say as to who owns forests and how they will be used. The drafters of the new Forest Act have also avoided recognising hunter-gatherer forest communities as indigenous peoples and have instead opted to address them as "forest communities". But for a community to be recognised as a forest community entitled to forest management rights, it must have registered as a forest association with the Kenya Forestry Board. It must also present a forest management plan to the board. It will be at the discretion of the board to accept or reject the community management plan. Literacy levels - especially legal literacy - among forest communities are critically low. They are not aware, therefore, that they are supposed to register as forest associations and come up with a management plan in order to be given rights to manage their ancestral forests. They may therefore soon find their forests being managed by informed forest activists from other communities who have registered themselves as forest associations. Besides, why should forest communities enter into management agreements concerning forests that they have lived in and managed for centuries? Are the members of the Kenya Forestry Board better informed about forest management than the communities who have lived in the forests for years? Forest communities will not be fully represented on the Kenya Forestry Board - a presidentially appointed board. Past

government practices give reason to believe that these positions will be given to the president's political cronies.

The Forest Act also prohibits the sale of forest produce by communities. Honey, an important item in the forest communities' traditional lifestyles, is included in the definition of forest produce. Will community members therefore be arrested for selling honey nurtured and harvested from the forests? This does not make much sense, since the use and sale of such honey and wild fruits is actually a powerful incentive to protect the forests.

The Forest Act identifies corporations among the potential owners of forests. But, like all potential forest owners, the corporations must register themselves as forest associations and enter into forest management agreements with the Kenya Forestry Board. Logging companies will definitely be the most interested, for obvious reasons. Cutting and replanting trees will surely be a prominent feature of the management agreements logging companies will want to enter into. This will constitute a major threat to indigenous forest biodiversity because logging companies will only replant areas they have cleared using fast-growing exotic trees rather than the normally slow-growing indigenous ones.

Empowerment of forest communities

Despite these shortcomings, the Act is still the best means that forest communities can use to regain control of their forests. But, for this to happen, all will depend on whether the forest communities can quickly be sensitized and assisted to register as forest associations. When they have control/management of the forests, they can then negotiate the recognition of their right to a livelihood, which is implicit in the trade in honey and other non-timber forest produce, as trade in these products constitutes a viable economic activity. They can also negotiate sustainable hunting rights in their forests. And because their forests constitute the goose that lays the golden tourism egg, it is only fair that they should also get a share in the profits that accrue from tourism activities downstream.

Hunter-gatherer forest communities have a right to practise their cultures. And, because their cultures rely on the continued existence of the forests, they have no reason to destroy them. Logging and forest destruction are generally caused by business interests and agricultural communities. Yet nature is proving that these activities are not sustainable, as evidenced by increased desertification, water scarcity and climate change. The fight against logging and forest destruction must therefore start with the recognition of forest communities as distinct separate peoples with sustainable forest-based cultures that must be allowed to continue to exist. Forest-friendly cultures are essential if we are to preserve the goose that lays the golden egg – our forests!

***Kanyinke Sena** is a lawyer and human rights activist from the Ogiek community in Kenya. He is currently sensitizing indigenous communities in Kenya on their rights under International, Regional and Local Environmental and Property laws. He is also the Regional Representative, East and Horn of Africa, of the Indigenous Peoples of Africa Coordinating Committee (www.ipacc.org.za). He can be reached at kanyinke@yahoo.com.*

Note

¹ A Ramsar site is a wetland of international importance because the water found therein is the primary factor in controlling the environment and associated plant and animal life. Under the Ramsar Convention of 1971, contracting parties have clear obligations to protect Ramsar sites. Kenya became a contracting party to the convention on 5 May, 1990. So far, 153 countries have ratified the convention and 1,629 sites have been identified as Ramsar sites.

² FAO Forestry Department's country page on Kenya:

<http://www.fao.org/forestry/foris/webview/forestry2/index.jsp?siteId=5081&sitetreeId=18308&langId=1&geoId=73>.

Forestry conflicts in Finnish Sápmi: Local, National and Global Links

Rebecca Lawrence and Kaisa Raitio

The official status of the Sámi as the indigenous peoples of Finland has been recognised in Finnish legislation since the early 1990s. The right of the Sámi to practice their culture is enshrined in the Finnish constitution (1999), and in this context Sámi culture has been understood to include traditional Sámi livelihoods, such as reindeer herding, hunting and fishing. In addition to the constitution, the Reindeer Husbandry Act (1990/848) and the Act on Metsähallitus (Finnish Forestry and Parks Service, 1378/2004) give reindeer herding – and Sámi reindeer herding in particular – relatively robust protection. Finland has also ratified Article 27 of the International Covenant on Civil and Political Rights, which requires recognition of the cultural rights of ethnic minorities. Applied in Finland, this requires the Finnish state to protect and give recognition to the rights of the Sámi to practice traditional indigenous land uses, such as reindeer herding. In concrete terms, the national and international regulations require that reindeer have free access to grazing lands irrespective of land ownership, and that other uses of state-owned land should not be practiced in a way that “significantly hinders” reindeer herding (Reindeer Husbandry Act (1990/848)).

The Finnish government has been criticised, however, both by Sámi organisations – for not ensuring adequate *practical* protection of reindeer herding – and by the UN Committee on the Elimination of Racial Discrimination – for failing to pass legislation on the more fundamental question of Sámi customary title to land. The Finnish government has failed to pass legislation on Sámi land ownership issues three times (1952, 1973 and 1990) and the forestry industry has been a powerful lobbyist in opposing any legislation that might give recognition to Sámi claims to land (Tuulentie 2003). In this climate, continuous and heated debates persist over how the rights of the Sámi can be balanced against other resource management interests within the traditional territories of the Sámi, of which 90% is currently claimed by the Finnish state as crown lands. One of the most controversial debates of recent times has focused on the conflicting interests of reindeer herders and the logging industry. This article aims to briefly outline some of the local, national and global links and challenges in a dispute over logging in the municipality of Inari, in Northern Lapland, where the protests by Sámi reindeer herders and environmental NGOs over state logging on reindeer winter grazing areas have received considerable international attention.

History of forest conflicts and campaigns in Sápmi

The disputes between reindeer herding and state forestry are neither unique to Inari nor a new phenomenon to Finland or the Nordic countries. The oldest of such disputes was identified in the early days of commercial forestry in the Finnish part of Sápmi (Sámi homeland, see map) in the 1950s (Magga 2003). Disputes between forestry and reindeer herding in Finland have also emerged in other parts of Lapland, in regions with both Sámi and non-Sámi (ethnic Finnish) reindeer herders.

The disputes are caused by the adverse impacts forestry has on the amount and availability of reindeer nutrition – ground lichen and tree-hanging lichen – during the

most critical period of the year, in the winter. Tree harvesting, soil scarification, road construction and other forestry-related activities diminish, deteriorate and fragment lichen grounds, cause additional work for herders and further decrease the possibility for reindeer to graze freely. Despite the relatively high percentage of protected forests in Inari (some 40%) as a whole, old winter grazing forests are, in many places, not included in the protected areas and are hence becoming increasingly scarce. Since old forests are typically both valuable winter grazing areas and rich in timber, the interests of the logging industry and reindeer herding often conflict in these areas.

The negative effects of forestry on reindeer herding are no longer under dispute. The parties disagree, however, as to the extent and duration of the damage. Herders essentially argue that although commercially managed forests can be used for reindeer grazing, a forest will never regain its original status and value as a winter grazing ground once it is taken into commercial use. Forestry professionals in turn maintain that the damage is temporary and can be duly managed in forestry planning. They consider it both possible and desirable for logging activities and reindeer herding to co-exist. This argument is based upon the common Finnish notion that multiple land uses can and *should* co-exist in the same forests. The idea that Northern Lapland is a vast expanse of wilderness in which everybody's interests can be accommodated is thus seen as fundamental both to the forestry industry and to the greater Finnish society (Finnish Forestry Foundation 2005). As a consequence, it is difficult for the forestry industry to accept that any substantial areas should be permanently set aside from forestry in the name of reindeer herding.

In Inari, considerable dissatisfaction had arisen by the 1990s within the reindeer herding co-operatives (RHCs) over Metsähallitus (Finnish Forest and Parks Service) logging on reindeer pastures. Yet there was little co-ordination between the RHCs, nor did they have any direct media strategies. The civil law suits filed by the herders against the Finnish state failed to stop logging in controversial areas. During the 2000s, however, closer co-operation amongst the RHCs,¹ between the RHCs and the environmental movement,² and between RHCs and Sámi political organisations³ has provided the herders with new leverage and has resulted in serious challenges to the state forestry operations and Finnish policies regarding Sámi rights. Instead of each RHC negotiating individually with Metsähallitus, in 2002, reindeer herders began to coordinate their activities and demands by forming an alliance. With the technical assistance and resources of environmental NGOs, the RHCs were able to identify their most important winter grazing grounds on joint maps, which proved vital in communicating their demands and concerns to politicians, the market and the wider public. Through a long process of inter-personal trust building at the grassroots level in Inari, the herders and environmental groups, in particular Greenpeace Nordic and the Finnish Association for Nature Conservation, were also able to agree on joint campaign strategies. The campaign experience, international contacts and considerable resources that the environmental NGOs placed at the disposal of the herders provided them with an unprecedented possibility to mobilise and make a political issue out of what the Finnish state had called "isolated disagreements".

The Sámi Council, in turn, covered yet another channel of influence by arguing for the paper industry's responsibility in ensuring that all wood was procured ensuring respect for indigenous peoples' rights. The Sámi Council questioned the listing of paper

giant Stora Enso – customer to Metsähallitus and main purchaser of timber from Inari – on ethical indices such as the Dow Jones Sustainability Index and FTSE4Good. This began with a simple letter writing campaign by the Sámi Council to Stora Enso and the respective indices in late 2005 but soon developed into intensive dialogues between the Sámi Council and Stora Enso, via the index rating agencies. These dialogues concerned the commitments Stora Enso had made to respect the rights of indigenous peoples both in their own corporate policies and to the respective ethical indices. The Sámi Council criticised what it saw as a breach of these commitments, given that Stora Enso was procuring wood from Metsähallitus logged on reindeer herding territory. As with any successful grassroots campaign, the Sámi Council was in continuous close contact with local reindeer herders and also benefited from the campaigning experience of Greenpeace and their established contacts within the paper and pulp industries.

Finnish State approaches: Participatory planning and consultations

Since the 1970s, Metsähallitus has made numerous attempts to reconcile the interests of forestry and reindeer herding through face-to-face consultations with herders. Since the mid-1990s, Metsähallitus has also introduced a number of multi-stakeholder participatory planning processes at the local level. In 2000, Metsähallitus adopted a new Natural Resource Plan for state lands in Northern Lapland where major strategic decisions regarding the scope and intensity of different land uses were taken. The planning process included extensive public participation by local stakeholders such as Inari Municipality, the Sámi Parliament, affected RHCs, local nature conservation associations, hunting, tourism, other local residents and forestry authorities. In response to the critique by some RHCs of the forestry practices and the increasing international media attention, Metsähallitus defined the primary goal for the Natural Resource Plan as being to reconcile and scale different activities, in particular forestry, so that the prerequisites of reindeer herding and Sámi culture could be secured (Piiparinen & Kotisaari 2006, Raitio 2006).⁴ Metsähallitus have also decreased the logging volumes several times, from 200 000m³ in the 1980s to 115 000m³ in 2006.

Several fundamental problems have remained, however, and have resulted in considerable protest, as described above. Despite the participatory process, Metsähallitus eventually adopted the Natural Resource Plan without the consent of the Finnish Sámi Parliament or the dissenting Sámi reindeer herding co-operatives, who considered the annual timber harvest plan to be too high (despite the reductions) and the adverse impacts on reindeer herding unacceptable. Metsähallitus defended the decision by stating that the adopted volume of timber harvesting was necessary for the sustenance of the local sawmill and for the employment of other forest and wood dependent workers in Northern Lapland. Likewise, Metsähallitus customers – such as the paper giant Stora Enso – continue to argue that the Natural Resource Plan is a “good tool to continue local negotiations”. Stora Enso thus considers their procurement of Metsähallitus wood for the paper and pulp market to be both legitimate and ethical (Lawrence, forthcoming). Industry has argued that the Natural Resource Plan was developed through democratic, transparent and consensual forms of dialogue although dissenting Sámi reindeer herders have protested not only at the actual logging but at the Metsähallitus framework of negotiation.

The disputes are exacerbated by the controversial role of Metsähallitus, which has a dual function in Northern Lapland as both the regulator of the lands and as forestry enterprise. Metsähallitus logs on lands claimed by the State as its own, and at the same time it represents the State as manager of those lands. Metsähallitus is an arms-length state enterprise, the largest supplier of wood in Northern Lapland, distanced from the Finnish state by its status as *enterprise* but closely governed by the Finnish Ministry of Agriculture and Forestry. The credibility of negotiations and agreement-making processes over logging, in which Metsähallitus is both the *mediator* of stakeholder dialogues and *proponent* of logging, has thus been raised as a central issue of concern by Sámi reindeer herders, Greenpeace and Sámi organisations. Their point is this: multi-stakeholder forums (e.g. public participation) can actually function to silence dissenting voices through practices of dialogue that falsely presume equality amongst stakeholders (Raitio 2006). Also of concern is the fact that, despite Metsähallitus' commitment to round-table discussions and public participation, logging has often continued regardless of whether consent has been given by Sámi reindeer herders or not.

Conflicts at local, national and global levels

Metsähallitus and Finnish wood customers, such as Stora Enso, have commonly painted the problem as a local dispute between reindeer herders and loggers and the solution as one of “balancing livelihoods” at a local level (between loggers and reindeer herders) through the Natural Resource Planning process (Lawrence forthcoming, Raitio 2006). Indeed, the disputes have a long history, and local context is integral to understanding the conflicts. The impacts of the conflicts are also acutely tangible in the local community. But as the conflicts have come to include international paper buyers, UN interventions regarding Finnish state policies, international NGO critique, interest from ethical investors and ethical investment organisations and a transnational indigenous peoples' movement, the *local* needs to be read through both a *national* and *global* lens in order to understand the complexity of the disputes - and, hopefully, settle them.

Despite the common claim of the forestry industry – that “local” solutions should be found for “local” problems - protesting Sámi reindeer herders, Sámi organisations and NGOs have not been content to limit their concerns to the local level. For them, the conflicts are representative of broader problems at the *national* and *global* level. Sámi reindeer herders, who frame the dispute as a question of the Finnish state's failure to follow its own legislative commitments to the rights of Sámi reindeer herding, have lobbied the Finnish Ministry of Agriculture and Forestry to lower logging quotas and to permanently remove 700 km² of productive forest land from forestry operations. They have also required direct negotiations with the state instead of its “business arm”, Metsähallitus (Raitio 2006).

In order to increase the pressure on the Finnish government, Greenpeace has supported herders' claims and campaigned against Metsähallitus' customers in Finland, Germany and the UK by appealing to the paper industry's responsibility to ensure that wood is logged according to principles of ecological and social sustainability. In addition to the Sámi Council's dialogues with ethical rating agencies and ethical investors, the Sámi Council has also filed shareholder resolutions at Stora Enso's Annual General Meetings and proposed that Stora Enso cease procuring wood from Metsähallitus logged in areas of dispute (Lawrence, forthcoming).

At around the same time that both the Sámi Council and Greenpeace were increasing pressure on Stora Enso and their customers, in late 2005 several local Sámi reindeer herders from the affected areas in Inari – the Paadar brothers - were appealing to the UN Human Rights Committee for a logging moratorium in the disputed forests for the duration of a national lawsuit the herders were planning to bring against the state. The Paadar brothers' appeal concerned a small section of logging in Nellim village but which formed part of the larger disputed areas of 92,000 hectares that had been mapped by Greenpeace and local Sámi reindeer herders. The UN Human Rights Committee responded to the Sámi reindeer herders' application within several days and the logging ceased in Nellim shortly thereafter. The local reindeer herders' UN appeal and the Sámi Council's campaign to the ethical indices were not coordinated, but neither was their timing entirely uncoincidental. In the views of both the Sámi Council and local Sámi reindeer herders, the loggings had encroached onto traditional reindeer grazing lands to an extent that no more forest was felt to be "negotiable" and action was felt to be absolutely necessary. While the local Sámi reindeer herders took one route through the legislative system, and the Sámi Council took another route through the "market" by lobbying the ethical indices, these two campaigns converged in important ways. To frame the disputes purely in terms of a local conflict – as the Finnish forestry industry commonly does – clearly misses the complex links between the local, national and global spheres and the ways in which Sámi peoples are strategically protesting at multiple scales.

Whose responsibility?

Another conceptual challenge is in the way people speak about, and think about, responsibility. Despite Stora Enso's commitment to principles of Corporate Social Responsibility, the Finnish state's commitment to Sámi cultural rights, and Metsähallitus' commitment to respecting those rights as part of its participatory planning processes, locating *responsibility* continues to be a challenge for the stakeholders involved. Stora Enso claims they do not have a direct role in the conflicts and that they are merely a customer to Metsähallitus. Furthermore, Stora Enso has defended their procurement of the disputed wood by explaining to paper customers that dissenting Sámi reindeer herders represent only one of many stakeholder interests. Metsähallitus, in turn, claims they are governed by the Ministry of Agriculture and Forestry and do not have a mandate to negotiate with Sámi reindeer herders over radical reductions in harvest volumes or to exclude further areas from logging. And finally, the Finnish Prime Minister, whilst in Inari in early 2005, claimed that the Finnish government had no role in the dispute because this was on the one hand "a local dispute" and on the other an issue driven by international paper buyers.⁵ Responsibility is thus avoided by appealing to the responsibility of *others*.

But, at some point, responsibility must be taken at all levels. Instead of fuelling conflicts between local reindeer herders and loggers (both of which include both ethnic Finns and Sámi) through the use of political rhetoric, the Finnish state needs to draft legislation that provides for an institutional co-management body of the Sámi, other local people and the state in relation to the use of state forests in Sápmi. The existing legislation regarding Sámi rights, vis-à-vis other land-use interests, also needs to be strengthened by more concrete and specific regulations. Furthermore, the state needs to

re-design the Metsähallitus organisation so that the economic interests of the state do not render negotiations with reindeer herders meaningless. Metsähallitus needs to develop fair negotiation procedures with local Sámi reindeer herders and acknowledge the *difference* between land uses: Sámi reindeer herding is protected by Finnish legislation and international covenants to a different degree than timber harvesting. Stora Enso, in turn, needs to develop clearer guidelines and written policies for wood procurement in indigenous peoples' territories and ensure that Metsähallitus respects such corporate commitments. Finally, international paper customers have a responsibility to ensure that their paper is sourced in line with their own ethical commitments to respect the rights of indigenous peoples to traditional land-use practices.

While the fate of the disputed forests remains unsettled, it seems clear that the increased co-operation and coordination between herding co-operatives, and with environmental NGOs and political Sámi organisations, has significantly increased the ability of the local protesting Sámi herders to make their voices heard. But this has not come without a price. The co-operation with Greenpeace has led to huge counter protests by the local and national timber-dependent actors, not only against Greenpeace but also against protesting Sámi reindeer herders. This has caused some of the local communities to become deeply divided. Some, in support of the logging, have called for a boycott of reindeer meat and have even threatened the personal safety of dissenting reindeer herders and other protestors. However, as serious as these issues are, they are local manifestations of broader challenges. The international interest in the issue – by ethical indices, the UN, paper customers and international NGO community – has made it increasingly difficult for the Finnish state to contain the issue as a “local” dispute. The conflicts, and responsibility for their resolution, are thus embedded in local, national and global links.

Acknowledgements

We would like to thank Metsähallitus, Stora Enso, Greenpeace, the Sámi Council and the local people of Inari for their generous contributions to this work. We take full responsibility for the research contained herein.

References

Finnish Forest Foundation, 2005: *Northern Lapland – Only The Feeling Is True (Ylä-Lappi – Vain Tunne On Totta; Oberlappland – Nur Gefühle sind echt)*, DVD Edition 20.6.2005

Lawrence, R. (forthcoming): Corporate Social Responsibility, Supply-chains and Sámi claims: Tracing the Political in the Finnish Forestry Industry. In: *Geographical Research*.

Magga, H., 2003: Poronhoidon menetykset ja sopeuttaminen suuriin ympäristömuutoksiin Lapin paliskunnassa 1950-luvulta lähtien. In: Heikkinen, H., 2003: *Kuuluuko sääsken ääni taivaaseen?* Helsinki University of Technology, Laboratory of Environmental Protection, Publication 3/2003. pp. 11-78.

Piiparinen, H. & Kotisaari, A., 2006: *Participatory Processes in Finnish Forest Conservation. Participation by stakeholders.* Helsinki, Ministry of Agriculture and Forestry.

Raitio, K., 2006: *Environmental conflicts and their management: the conflict between reindeer herding and timber production in Inari, Finland*. Paper presented at Vaartoe – Sami research in the future. 21-23 August 2006. Jokkmokk, Sweden.

Tuulentie, S., 2003: For and against the rights of the Sami people: The Argumentation of the Finnish Majority in the Debate on the Sami Rights. In: Svein, J., Minde, H., and Nilsen, R., (eds) *Indigenous Peoples: Resource Management and Global Rights*. Eburon Publishers, Delft.

This article is based on on-going research by both Rebecca Lawrence and Kaisa Raitio. For preliminary results in English, see Lawrence (Forthcoming) and Raitio (2006).

Rebecca Lawrence is based at the Department of Sociology at Stockholm University. Her research is interdisciplinary and focuses on the intersection of indigenous claims with governments and the private sector. Her PhD involves several case studies, one of which concerns Stora Enso's role in the disputes over Sámi rights and logging in Sápmi.

Kaisa Raitio M.Sc. is a researcher on environmental policy at the University of Joensuu, Finland. She is currently finalising her PhD on Conflict Management in Finnish State Forestry. The Inari dispute is one of her case studies, and she has followed the dispute closely since 1998.

Notes

¹ See www.inarinpaliskunnat.org for more information from the alliance of protesting Reindeer Herding Co-operatives.

² See <http://weblog.greenpeace.org/forestrescue/> for more information on the Greenpeace campaign for reindeer forests.

³ See the Sámi Council's web page for more information on their involvement www.Samicouncil.net

⁴ See also www.metsa.fi for Metsähallitus public material on Northern (Upper) Lapland.

⁵ Stated by the Finnish Prime Minister, Matti Vanhanen, on local radio in Lapland, 28 November 2005 (www.lapinradio.fi) and in the local newspaper *Lapin Kansa*, 29 November 2005.

Forestry management based on Local Values: an Example of Forest Co-management in British Columbia

Gail Fondahl, Beverly Leon and Sue Grainger

In 1999, the Tl'azt'en Nation, a First Nation in central British Columbia in Canada, and the University of Northern British Columbia (UNBC) together founded the John Prince Research Forest (JPRF). The Tl'azt'en Nation numbers approximately 1,500 persons, about half of whom live in four villages within the group's traditional territory. They speak an Athapaskan-family language, Dakelh (also known as Carrier). Their traditional territory covers some 6,500 square kilometers in north-central British Columbia. Historically hunters, gatherers and fishers, Tl'azt'enne continue to pursue their traditional activities on their land base, as well as work in the forest industry and other local activities. Unemployment is high, as Tl'azt'enne no longer control the resources on their traditional territory. They are pursuing treaty negotiations to regain their rights to this territory.

The University of Northern British Columbia was founded in 1990, and opened in 1994. From the beginning, it had wanted to establish a research forest to support the training of students in its Faculty of Natural Resources and Environmental Studies, and to provide a site for long-term research into sustainable forestry practices for its faculty and graduate students. In 1994, the British Columbia Ministry of Forests identified 13,000 ha of "unallocated Crown forest land" that it would be willing to allocate for this purpose. The land was within the traditional territory of the Tl'azt'en Nation. The university and the Tl'azt'en Nation entered into talks around cooperating on the management of this forest base. In 1999, the provincial Ministry of Forests allocated this land as a research forest to be co-managed by the University and the Tl'azt'en Nation.

Integrating traditional and scientific approaches to forest management

The John Prince Research Forest (JPRF) is a working forest as well as a research and education facility. Logging in the forest supports a variety of research and education programs benefiting the Tl'azt'en Nation and the University of Northern British Columbia, as well as supporting the operation of the facility. *Chuzghun Resources Corporation* (CRC), a non-profit company owned by the Tl'azt'en Nation and the university acts as the co-management board, with three board members appointed by the Tl'azt'en Nation and three appointed by the university. The co-management board has identified the focus of the forest's programs as "integrating traditional and current scientific approaches into resource management and research [to achieve] long-term sustainable and sound management" (JPRF Co-management Board 1999).

While timber sales support training, education and research initiatives, the forest land base is also an important area for families to pursue subsistence activities. Its land base includes traditional medicinal and food plant gathering sites, historic trails used by the Tl'azt'en, culturally modified trees and spiritual sites which still hold significance today. Three *Keyoh*, or family territories, comprise the majority of the Research Forest land base: Tl'azt'en extended families manage and steward the resources of their *Keyoh*, to ensure the well-being of the current and future generations. This system of local

governance and land tenure was somewhat eroded during the twentieth century, with the introduction of state institutions such as registered trap lines. Today, Tl'azt'enne continue to practice the *Keyoh* system, and are interested in reasserting its role in governance. The varied uses by Tl'azt'enne of the forest and their traditional governance system need to be taken into account in developing forest management practices for the John Prince Research Forest.

Collaborative research

Although the John Prince Research Forest (JPRF) has been set up to serve the needs of the two co-management partners, how does the *Chuzghun Resources Corporation* know what these needs are, or if management practices are achieving the goals of the partners? Over the past half decade since the establishment of the JPRF, the Tl'azt'en Nation and the University of Northern British Columbia have been carrying out a collaborative research program to learn how Tl'azt'en members and researchers define sustainable forest management, and to begin to develop measures that will allow the *Chuzghun Resources Corporation* to monitor the JPRF's success in meeting these definitions. The research also forms the basis for critical decisions on how to reinvest the monies earned from logging, and how to choose where to log and where to avoid logging. Local criteria and indicators of sustainable forest management have been identified in terms of both processes and outcomes of co-management (Sherry et al. 2005, Grainger et al. 2006).¹

Tl'azt'en values of sustainable forest management

The table below summarizes some of the local criteria, indicators and values that Tl'azt'enne indicate are critical to *their* definition of sustainable forest management (a more complete listing and discussion is found in Sherry et al. 2005). It is interesting to note that the Tl'azt'en criteria and indicators in particular emphasize social and cultural outcomes, as well as economic and ecological outcomes, as critically important to their definition. Social and cultural dimensions of sustainability have received less attention from nationally and internationally generated criteria and indicators of sustainable forestry.

Table 1: Examples of Tl'azt'en Criteria, Indicators and Values for Sustainable Forest Management

Economic Sustainability		
Criteria	Indicators	Critical Tl'azt'en Values
Provide local economic opportunities	Community capacity	Provide education and training to promote local economic development
	Access to economic opportunity (in forestry)	Spread opportunities and benefits among small operators
Provide for subsistence land use	Opportunities for subsistence fishing	Continued availability of char, trout, salmon, sturgeon, suckerfish, whitefish
	Opportunities for subsistence hunting	Continued availability of bear, deer, caribou, wildfowl, moose, grouse, rabbits, mountain goat

	Opportunities for subsistence gathering	Continued availability of medicinal plants, materials plants and food plants
	Opportunities for subsistence trapping	Continued availability of rabbit, beaver, coyote, fisher, fox, lynx, marmot, mink, muskrat, otter, squirrel
Provide employment opportunities	Employment practices established	Priority hiring of Tl'azt'en Nation members, <i>Keyoh</i> holders
	Ensure equity of employment opportunities	Distribution of opportunities among families, small contractors
		Promotion of employment opportunities for women, youth, <i>Keyoh</i> holders
Ecological Sustainability		
Maintain forest ecosystem condition and function	Maintain ecosystem diversity	Protect and generate medicinal plants
		Use minimal impact harvesting techniques
		Maintain natural ecological processes and patterns (e.g. occurrence and severity of fire, insects, disease)
		Conserve forest land base
		Ecologically restore damaged or degraded sites
	Maintain biological diversity	Maintain viable populations and habitats of fish, ungulates, birds, small mammals, carnivores, fur-bearers
		Maintain viable populations and habitats of medicinal plants, food plants, material plants
		Protect rare ecological sites and special landscape features
		Protect threatened and endangered species
	Protect riparian areas	Protect wetlands, lakes, ponds, rivers, streams
Protect water resources	Protect watersheds for human consumption, fish, and wildlife	
Social and Cultural Sustainability		
Community health and well-being	Contribute to community development	Enhance community infrastructure (e.g. recreation, traditional learning centres)
	Relationship building	Provide community services
		Increase inter-generational connection
	Independence	Improve community cohesion
		Provide for long-term, secure access to lands and resources
	Cultural revitalization	Recognize and respect legal and customary rights
Transmit traditional knowledge and cultural values		

		Restore traditional forms of governance
		Transmit gender-specific knowledge
		Restore role of elders as teachers
		Increase observational/experiential learning opportunities
		Respect oral tradition

Note: This is a very partial list of local criteria, indicators and values identified through research, and is meant only to exemplify the diversity of such values.

From identifying local values to implementing informed practices

Forestry planning on the John Prince Research Forest (JPRF) takes into account many of Tl'azt'en values for sustainability. Tl'azt'en members whose *Keyoh* territories coincide with the JPRF land base have enjoyed priority employment rights and accessed funds from logging profits to improve their *Keyoh* infrastructure (e.g. for trapping cabin renovation, trail maintenance, etc). Their input is sought and incorporated into forest development planning and they have participated in wildlife enhancement programs on the JPRF. Tl'azt'enne (including *Keyoh* members) have received a variety of training and have been employed in the Research Forests in forestry operations, facility management and research and education programs. *Keyoh* members' concerns around resource sustainability have been developed into a community-based environmental monitoring program, in which they are paid participants. Research projects developed between the Tl'azt'en Nation and the University of Northern British Columbia include documenting and archiving traditional ecological knowledge of plants and place names, developing curriculum for outdoor culture camps based on traditional ecological knowledge, looking at the potential for diversifying economic activities in the forest (e.g. ecotourism) and developing methodologies for integrating First Nation's land values into forest management planning. The JPRF has collaborated with the Tl'azt'en Nation on a variety of projects, currently including: a labour market study, traditional campsite development and a wildlife monitoring program. JPRF revenues from logging have also been used to support outdoor culture camps, to provide bursaries for Tl'azt'en members pursuing post-secondary education, to support Tl'azt'en natural resource technical training and to assist community groups, such as a local youth hockey team.

Current research is also looking at how to measure success (or lack thereof) in meeting Tl'azt'en values of sustainable forest management. Co-management is a process: the Tl'azt'en Nation and the University of Northern British Columbia bring different strengths to their partnership, and their relationship in co-management continues to evolve and mature over time. To bring structure to the continuing development of the partnership and ensure that local definitions of sustainability are being met, the JPRF management are developing a system of criteria that will provide its Board of Directors with direction in meeting community expectations around sustainability issues and will provide a monitoring system that will track their progress in meeting the local values of its constituents.

References

Partnering for Sustainable Resource Management. Tl'azt'en-UNBC Community-University Research Alliance website: <http://cura.unbc.ca>

Grainger, S., Sherry, E., and Fondahl, G., 2006: The John Prince Research Forest: evolution of a co-management partnership in northern British Columbia. In: *The Forestry Chronicle* 82(4):484-495

John Prince Research Forest Co-management Board, 1999: *JPRF Strategic Planning Session Document, 29-30 October 1999*

Karjala, M., Sherry, E., and Dewhurst, S., 2004: Criteria and indicators for sustainable forest planning: a framework for recording Aboriginal resource and social values In: *For. Pol. Econ.* 6:95-110

McGregor, D., 2002: Indigenous knowledge in sustainable forest management: community-based approaches achieve greater success. In: *The Forestry Chronicle* 78:833-836

Sherry, E., Halseth, R., Fondahl, G., Karjala, M., and Leon, B., 2005: Local-level criteria and indicators: an Aboriginal perspective on sustainable forest management. In: *Forestry* 78(5):513-539

Treseder, L and Krogman, N., 1999: Features of First Nation forest management institutions and implications for sustainability. In: *The Forestry Chronicle* 75(5):793-798

Gail Fondahl is Chair of the Geography and Outdoor Recreation and Tourism Management Programs at the University of Northern British Columbia. She is Principle Investigator on the "Partnering for Sustainable Resource Management" Tl'azt'en-UNBC Community-University Research Alliance project, a position she also held on previous Tl'azt'en-UNBC research projects on local criteria and indicators of joint forest management.

Beverly Leon is the Tl'azt'en Community Research Coordinator on the "Partnering for Sustainable Resource Management" Tl'azt'en-UNBC Community-University Research Alliance project, and served as a research associate on previous Tl'azt'en-UNBC research projects on local criteria and indicators of joint forest management.

Sue Grainger is the forest manager of the John Prince Research Forest and adjunct faculty in the department of Ecosystem Science and Management at the University of Northern B.C.. She is a Co-Investigator on the "Partnership for Sustainable Resource Management, Tl'azt'en-UNBC Community-University Research Alliance project".

Note

¹ See also <http://cura.unbc.ca>.

After decentralization: the implications of small-scale logging for communities' access to forests in Indonesia

Godwin Limberg

Until 1997, Indonesia's forestry policy was highly centralized and all logging permits were issued in the national capital, very often to people well connected to the government. During this period (1980s-1999) the estimated rate of deforestation was 1.6 million hectares annually. After the downfall of President Soeharto, a whole range of political reforms occurred in a very short time, including in the forestry sector. At approximately the same time, regional autonomy was implemented, which meant that small-scale logging permits could be directly issued at district level by the district forestry service and the district head. Decentralization for the first time provided opportunities for communities to directly participate in forest management.

Small timber harvest permits (in Indonesian *Izin Pemungutan dan Pemanfaatan Kayu*) included provisions ensuring that villages received benefits from commercial timber extraction. Yet the extent of those benefits has been limited. Rent-seeking local bureaucrats, entrepreneurs and community elites at the district level have used the new opportunities to further their own interests through lucrative small-scale timber harvesting. Under these arrangements, communities receive minor cash fees, development of some village infrastructure and employment opportunities. These benefits are significant enough, however, to cause most community members to overlook fundamental issues of rights over and long-term access to forests. The local government attitude has been ambiguous: timber harvesting licenses were issued specifically for areas claimed as customary territories. This could be interpreted as an indirect recognition of communities' land rights claims. But the reality is that the local government has been reluctant to formally recognize communities' claims to forest and land.

In this article, I use the example of seven small-scale timber harvesting operations in the Malinau area of East Kalimantan (from 2000 to 2003) to describe the type and quantity of benefits communities received and the implications of this experience for future community access to forests.

Small timber harvest permits in Malinau's watershed

Malinau is a newly created district (established in 1999) located in the interior of the province of East Kalimantan on the island of Borneo. The people of Malinau are mainly Dayaks (over 18 different sub-groups,) including the largest number of Punan, formerly nomadic hunter-gatherers. Their main source of livelihood is upland agriculture and collection of forest products. The villages studied are predominantly inhabited by Dayak (Kenyah, Merap, Lundaye) and Punan.

From July 2000 to February 2001, seven companies came to agreements with villages in the Malinau watershed. Unlike previous logging concessions that were allocated by central government to big companies, the main actors in the small timber harvest permit deals were local entrepreneurs, village elites and the district government. In six out of seven villages, deals were negotiated by entrepreneurs already known to the community and who had previously acted as traders in Non Timber Forest Products (NTFP) or buyers of illegal timber. They are based in Malinau or Tarakan and have wide networks in the area. Due to their previous business, they have established patron – client relations throughout the area. These entrepreneurs mainly dealt directly with the village leaders.

Negotiations between the villagers and the entrepreneurs focused on payment of a fee per cubic meter of timber extracted, in kind benefits, and employment for community members. Beside these

benefits in the early negotiations, entrepreneurs also promised to establish cash-crop plantations, as in Bila Bekayuk, Langap, Setarap/Punan Setarap and Adiu/Punan Adiu. Later companies did not make similar promises (Sengayan, Nunuk Tanah Kibang, Tanjung Nanga). See Table 1 for benefits that were negotiated by individual villages.

Table 1: Benefits promised by small timber harvest permits to villages in the Malinau watershed (in cash and kind)

Village	Fee/m ³ (Rp)	Benefits in kind
Setarap/Punan Setarap	40,000 (4.35 US \$)	Access road, leveling of area for village expansion, village office, church, rattan plantation, irrigated rice field
Adiu/Punan Adiu	20,000 (2.17 US \$)	Access road, leveling of area for village expansion, village office, village meeting hall, health clinic, rice huller, rattan plantation
Bila Bekayuk	Fee per m ³ not defined	House for each household, village office, village meeting hall, health clinic, school, TV, coffee plantation
Sengayan	30,000 (3.26 US \$)	Village meeting hall, rice huller, 5000 sheet iron roofing
Langap	7,500 (0.82 US \$), was renegotiated to Rp. 15,000 (1.64 US \$) in 2001	Leveling of area for village expansion, truck, bush cutter, pepper plantation, rice
Nunuk Tanah Kibang	30,000 (3.26 US \$)	30 houses, village office, village meeting hall, water pump, water tank (2), bush cutter, scholarship
Tanjung Nanga	50,000 (5.43 US \$)	-

\$ 1 = Rp. 9,200 (end May 2004)

During the negotiations, agreements about the exact location to be logged were more often than not vague. Sometimes villages included verbal agreements on local employment and community control of operations, especially measuring of timber production and about the conduct of logging operations. For example, Sengayan, Nunuk Tanah Kibang and Tanjung Nanga specifically requested that the companies applied selective logging of trees with a diameter of more than 50 cm. Tanjung Nanga also requested that lesser known species be cut to increase the volume of timber extracted.

Over time, the fee per cubic meter demanded by the villages increased. From no clear promise in Bila Bekayuk, the first village where a company logged, to Rp. 50,000 per cubic meter in Tanjung Nanga, the last village. Villagers learned from each other's experience and tried to get better deals. The outcome of negotiations on the fee was influenced by access to information and the negotiation skills of village leaders. In one case villagers were surprised that the entrepreneur actually offered a higher fee per cubic meter than they had intended to ask. They also realized that they actually might have got more if they had known the amount paid elsewhere.

Entrepreneurs also used the co-optation of influential persons in the village and intimidation to reduce amounts paid. Because prominent villagers were offered personal payments per cubic meter, even a small fee would create reasonable personal wealth. Through this unofficial arrangement, companies ensured that these influential persons had a personal interest in keeping the flow of logs going.

What did villages get out of it?

As shown in Table 2, villages expected to receive substantial amounts of money, in addition to benefits in kind and employment from the small timber harvest permits. In this section we analyze how much villages actually benefited from the presence of the small timber harvest permits.

Money

Villagers complained that large-scale logging companies had never contributed to the development of the villages where they operated. The total amounts received by the villages from the small timber harvest permits is large compared to previous community development aid by large-scale logging companies or government assistance, which was only 10 million rupiah per year per village plus minor community development projects. In this light, it is not surprising that villages were very enthusiastic about the benefits they received.

Based on the initial negotiations, villagers expected high economic gains from the small timber harvest permits. After two years were they right? Table 2 shows that all villages but one (Bila Bekayuk) received quite large sums of money, especially when bearing in mind that an average household would try to be self-sufficient in rice (their staple food) and hope for some additional (but irregular) cash income. Income from tree crops (coffee or cocoa) is more stable but seldom exceeds 1.5 million rupiah (163 US \$) per year. Cash from collection of gaharu (aloewood, a valuable non-timber forest product) is potentially higher but very irregular.

Table 2: Sums paid by small timber harvest permits to villages in the Malinau watershed from 2000 to June 2003

Village	Number of households	Total amount paid (Rp.)	Average per household (Rp.)¹
Setarap - Punan Setarap	94	640 million (69,565 US\$)	6.8 million (739 US\$)
Adiu - Punan Adiu	42	800 million ² 86,957 US\$	19.0 million (2,065 US\$)
Bila Bekayuk	52	27 million 2,935 US\$	0.52 million (57 US\$)
Sengayan	65	1 billion 108,696 US\$	15.4 million (1,674 US\$)
Langap	104	320 million 34,783 US\$	3.1 million (337 US\$)
Nunuk Tanah Kibang	36	500 million 54,348 US\$	13.9 million (1,511 US\$)
Tanjung Nanga	130	1 billion 108,696 US\$	7.7 million (837 US\$)
TOTAL	523	4,287 billion (465,978 US\$)	8.2 million (891 US\$)

1 Population data from December 2002. Information obtained per village from village head or secretary.

2 Estimate based on information that four payments were made, each payment was made after 10,000m³ had been produced at Rp. 20,000/m³.

\$ 1 = Rp. 9,200 (end May 2004).

Payments were made once every two to four months based on the volume of timber logged. The company disbursed the money to the village leader. The distribution system varied per community. Some divided the total amount equally among the number of households in the village. Some villages had different rates for different groups such as widows, students, bachelors, and sometimes even included village members working outside the village. Tanjung Nanga initially divided the money among heads of households, widows and community members working outside the village. Over time the system changed. Households received a total of between Rp. 500,000 and Rp. 2,000,000 per payment.

Villages faced several problems related to the fee payments. They had no accurate data on log production, and thus relied on statements from the company to calculate the total fee to which they were entitled. Companies sometimes used vague stories about losses of logs to reduce payments.

A second problem was that companies tended to pay the full amount to the village leaders. Due to a lack of reliable production data or other means of transparency, this payment system created suspicion among villagers.

Different sources of information indicate that various village leaders received individual payments that were not publicly accounted for. Villagers could not influence this system as these promises were made secretly. However, villagers did not protest against this arrangement as long as the money divided among the villagers was equal. People only protested if payments were late or if the discrepancy between the amount per household compared to the suspected sum received by village leader(s) was too big, as occurred in three villages. Protests were directed at the company. Villagers sent delegations to the company's office to protest and also seized heavy equipment. In one case, the village secured a higher fee per cubic meter (twice the amount of the original agreement). It is impossible to know whether this increase went at the expense of the amount paid to the village leaders or reduced the profit of the company.

Villages set aside little for public needs. Some village leaders explained that, even if they suggested that part of the money be saved or allocated to community development, the majority of villagers objected. In many cases villagers have ample experience of village leaders using village funds without discussion with or agreement from villagers, or for personal needs. This lack of transparency and accountability resulted in the villagers choosing for the "safe option": divide it all!

Most households spent their money on immediate needs such as food, medical care or luxury goods, e.g. electronic equipment. In the early days, in particular, people were easily convinced by travelling salesmen to buy a variety of goods. The travelling salesmen kept track of when the companies made payments and arrived with their goods at that time. Over time, the number of itinerant traders increased. A teacher in one village told how a family had just spent their fee on luxury items when a few days later they had to borrow money to pay for medical care for one of their children. He stated that this experience increased people's awareness of the need to be more careful in spending their money.

The perception from inside the villages and from neighboring villages is that little of the money from the small timber harvest permits has had a long lasting impact. This is confirmed by the household survey conducted in three villages, which showed that very few households have savings (at least that they are willing to report). Some of the neighboring villages might make these

comments partly out of jealousy. However, influential persons within the villages acknowledged that the small timber harvest permit money had contributed little to village development.

In kind benefits from small timber harvest permits

In all seven villages, the agreements included promises by the companies to provide a variety of infrastructural developments and, in four villages, the establishing of cash crops. Table 3 shows the in kind benefits resulting from these agreements.

Table 3: Benefits in kind for villages in the Malinau watershed from small timber harvest permits from 2000 to June 2003

Village	In kind benefits received	Unfulfilled promises
Setarap - Punan Setarap	Access road, leveling of area for village expansion, village office	Church, rattan plantation, irrigated rice field
Adiu - Punan Adiu	Access road, leveling of area for village expansion, village office, village meeting hall, health clinic, generator, rice huller	Village office, village meeting hall, health clinic, rice huller ¹ , rattan plantation
Bila Bekayuk		House for each household, village office, village meeting hall, health clinic, school, TV, coffee/betel nut/ pulp plantation
Sengayan	Village meeting hall, rice huller, 5000 sheets iron roofing	
Langap	Leveling of area for village expansion, bush cutter, rice	Truck (was returned because a high price was deducted from total amount), pepper plantation
Nunuk Tanah Kibang	30 houses, water pump, two water tanks, bush cutter, scholarship	Village meeting hall and office, scholarship only provided for short period
Tanjung Nanga	-	

¹ The company had promised to provide each village with its own village office, meeting hall, generator and health clinic. However, only one village received all facilities whereas the other village received none

Companies provided assistance for areas in which heavy equipment is needed and which are relatively expensive, i.e. road construction and levelling of village expansion area. The roads constructed, however, were necessary for timber extraction, so involved no additional cost for the companies. Landscaping around the settlement did incur additional costs and the villages had more trouble in ensuring that this assistance was provided. The construction of other village infrastructure like houses, a village office or meeting halls was partly accomplished.

There seems to have been a move from the early small timber harvest permits with many promises but few of them kept to the later ones where the percentage of promises fulfilled increased, starting with Bila Bekayuk, which did not receive any facilities and Langap, which received few in-kind benefits. The villages of Setarap - Punan Setarap, Adiu - Punan Adiu, and Nunuk Tanah Kibang received approximately half of the promised facilities. In Sengayan, the few items besides the fee payment were all fulfilled and Tanjung Nanga, with the highest fee, had no additional benefits promised. No company made any effort to establish plantations! But villagers do not seem to be too concerned about this.

Employment

Initially, villages envisaged that the small timber harvest permits would provide many opportunities for local employment, as many villagers had previous work experience in logging companies in Malaysia. During the negotiations, the entrepreneurs promised that the logging companies would provide employment for villagers. However, in three villages, people were quickly disillusioned when the companies brought in complete crews and did not provide any local employment. In two of those cases, the villagers demonstrated against the company and the company did, in the end, provide at least some employment for local people.

Villagers were also quick to learn that employment with the companies was less lucrative than anticipated. Payment rates were comparable to other parts of East Kalimantan, e.g. Rp. 2,750 per cubic meter for a chainsaw operator. However, costs of living are higher in Malinau. Secondly, some companies did not pay their employees for several consecutive months. Jobs on the side, like cutting and selling timber for local consumption, actually provided a better source of income. In one village, villagers supplied sawn ironwood to the entrepreneur, earning Rp. 400,000 per cubic meter. The logging company's tractors pulled the ironwood logs out of the forest for free. The local chainsaw operators were claiming that they could produce approximately one cubic meter of sawn timber per day. Since the entrepreneur bought several tens of cubic meters, this provided substantial additional income.

About forty people from four villages worked in logging operations as chainsaw and heavy equipment operators. The presence of small timber harvest permits provided some additional benefits, such as transport. In all villages, people regularly used company vehicles to travel to their fields, go to Malinau or to transport timber for personal use. Individuals in most villages benefited from the opportunity to saw timber for local sale. The presence of company laborers provided a temporary market for vegetables, meat and fish.

Involvement in forest management

Some villages included in their verbal agreements not only local employment but also community control of operations, especially measuring of the volume logged, the size of trees cut and the way logging operations were conducted.

Several local people were, in fact, involved in controlling the operations. However, in some cases, it was the company that paid the salaries of these people and they discouraged them from visiting the logged area too often. Even in Tanjung Nanga, where the community itself paid the salary of the community members, the company tried to discourage or obstruct them from performing their tasks. On the other hand, villagers went to the logged areas to hunt or collect forest products. During these trips, they observed the actual logging operations. However, there are no cases where reports from this informal control have led to action against the logging company if any violations were observed.

Impact on forest

Villagers observed that the logging had a significant impact on the forest. However, as Table 4 shows, villagers had little notion of how large an area was actually affected. Most estimates referred to the official acreage as assigned in the government permit. Some claimed that the impact was limited due to the application of selective logging. Yet in other villages, community members acknowledged that very few trees with diameter > 30 cm were left and that the logging operations had caused much damage to the soil. In four villages, logging operations had damaged peoples' gardens and agricultural fields without prior consultation.

Table 4: Comparison between actual and estimated acreage of forest affected by small timber harvest permit operations

Village	Acreage according to informants ¹ (ha)	Acreage according to permit (ha)	Acreage based on satellite image ² (ha)
Setarap/Punan Setarap	3,000 – 10,000	1,200	207
Adiu/Punan Adiu	1,500	1,500	532
Bila Bekayuk	n.a.	1,050	299
Sengayan	1,300	2,000	18
Langap	5,000	3,000	554
Nunuk Tanah Kibang	2,000	2,000	220
Tanjung Nanga	1,600	2,000	121

1 During a visit in June 2003, between one and four village leaders were asked to estimate the forest area logged by small timber harvest permits

2 Interpretation of January 2003 Landsat satellite image

Table 4 shows that, according to an assessment based on satellite images, the area actually affected by the logging operations is significantly smaller than the concession area allocated to the small timber harvest permits. This information contradicts the general view that small timber harvest permits impacted forest over an area larger than their official assigned concession due to a lack of control by government agencies. In the case of Malinau, three main factors influenced the operations of the small timber harvest permits, minimizing their impact. First of all, in the Malinau watershed, timber is still readily available at short distances from the logging roads previously established by logging concessionaires. Secondly, many small timber harvest permits used second-hand heavy equipment in (very) bad condition, virtually prohibiting major logging operations due to the high frequency of equipment breakdown. Thirdly, during this period the timber price was very low, further forcing the small timber harvest permits to minimize costs to maintain their profit margin. An additional problem small timber harvest permits faced was the rugged terrain in Malinau, which has already slowed down forest exploitation over the last twenty years.

Further ground validation of the areas affected by logging proved that some caution is needed when relying on satellite images to estimate the total forest area affected. The survey revealed that some of the areas that were logged early on (in 2000 – 2001) did not show up on the satellite image.

Although the immediate impact on the forest over the last two years is relatively small, small timber harvest permits have further extended the road network in a substantial part of the Malinau watershed. On the satellite image (Landsat January 2003), main and log roads accounted for an average of 69% of the still visible impact on the forest. This expansion of the road network creates opportunities for future forest exploitation.

In June 2003, village elites and community members involved in small timber harvest permits tended to downplay the negative impacts of the small timber harvest permit operations on the forest. This was after the small timber harvest permits had stopped logging and many villages were negotiating new deals with companies in the hope that logging and the flow of fee payments would continue. In November 2002, the district head of Malinau informed all small timber harvest permits that their permits would not be extended. During this transitional period, entrepreneurs tried to obtain new permits to convert small timber harvest permits into logging concessions (known as Izin Usaha Pemungutan Hasil Hutan Kayu (IUPHHK), with a maximum acreage of 50,000 ha per concession). The entrepreneurs also approached the villages to get their support for continued logging in their village territory. We know at least three cases in which the villagers thought that

downplaying the impact might increase the chances of new permits being granted. At the same time, in villages that received limited benefits or villages without small timber harvest permits, people tended to be more outspoken about the negative impact of logging operations on the forest's condition.

Impact on territory

At an early stage, villages recognized that small timber harvest permits only wanted to operate in village territories that were undisputed. Thus in order to be able to attract a small timber harvest permit, villages had to settle any outstanding conflict over village boundaries. In some cases, this condition was positive and stimulated neighbouring villages to come to boundary agreements.

In other cases, it actually aggravated disputes over territory and resource control. In these villages, the discussions concerning distribution of benefits and control over certain parts of the village territory became increasingly heated over time. In one case, one of the reasons given for early termination of logging operations was because no agreement could be reached between the two villages.

It is still too early to draw conclusions about how far the issuing of small timber harvest permits has influenced access to and rights over certain areas. The small timber harvest permits were issued for logging in customary (*adat*) territories, so it could be interpreted as an indirect recognition by the district government of claims by the communities. The local government so far has been hesitant to deal with the question of recognition of traditional rights because there are many different ethnic groups and different interpretations of *adat*. On the community side, there are no examples so far where the issuance of small timber harvest permits was used as an argument to strengthen their claim over a certain territory.

What lessons have been learned?

Short-term gain versus long-term interest

The period during which small timber harvest permits were granted was one of rapid change and great uncertainty. The district of Malinau had just been established, regional autonomy was to be implemented, authority over forestry policy was being debated and the district government's view on issues such as tenure, *adat* and community involvement in forest management was not clear. This situation of uncertainty provided little incentives for villages, and especially village leaders, to be too concerned about long-term interests. For example, it is still not clear whether the district government will recognize village tenure based on *adat* claims. It is quite possible that it will follow a centralized system of resource control and allocation similar to that prior to decentralization. An additional factor was that the companies put pressure on villages to come to an agreement quickly. In many cases, short-term gain prevailed over long-term interest.

How to make agreements

Villagers were aware that written agreements with the companies were essential. However, due to a lack of experience and maybe optimism about the companies' trustworthiness, the agreements that were drawn up were ambiguous. For example, they did not specify the size of buildings or sites to be leveled nor the schedule or conditions for payments. The ambiguity in the written agreements provided ample opportunities for the companies to interpret promises to their advantage. Many companies suggested that the villages should finalize the agreement with a notarial deed, supposedly to provide a stronger legal basis. However the villagers never questioned whether or not they knew how to use the notarial deed to take legal action if necessary. Eventually, the notarial deed was never used to take action against a company, despite the fact the certain promises had not been fulfilled by the time the company had ceased operation.

Support for communities

During this phase of rapid change, villages had few opportunities to seek information or support to consider alternative economic options or draw up contracts. There are very few non-governmental organizations (NGOs) active in Malinau district. One NGO was actually accused of being a broker for a logging company. The district government still had limited capacity during the initial stages and often only joined one brief visit to the community accompanying company staff. Thus, villagers had little option to seek assistance at times when they needed it. Companies normally also put (time) pressure on villages, further reducing their opportunity to consult other parties concerning important issues.

Community empowerment

Initially, villages had the impression that their role in small timber harvest permits was crucial. It was the first time businessmen had contacted villagers and that they could directly bargain. The letter of agreement between a community and the company seemed crucial in the permit procedure. The possibility to have community members controlling logging operations further added to the feeling of empowerment. However, after the initial euphoria, villagers quickly realized that their role was actually marginal and difficult to enforce.

Once villagers realized this, they concentrated on obtaining as many tangible benefits as possible. Their main concern was to receive the cash payments. Although villages had little means of controlling logging operations, they had one powerful tool with which to force the companies: stopping logging operations through road blocks or confiscating heavy equipment. Some villages tried to enforce agreements through negotiation or by letter but to little avail. Based on previous experience, they then relied on demonstrations.

Learning curve

The experience in the Malinau watershed shows that villages quickly learn from the experiences of neighboring villages. As mentioned above, the level of per cubic meter payment gradually went up. The negotiation process also became more sophisticated: better defined agreements, including a village meeting to discuss the offer made by the company in the negotiation procedure, keeping lists of villagers attending meetings to show wide support for the agreement. Villages quickly adjusted their negotiation techniques with the companies. Initially they tried to enforce agreements through dialogue by village leaders with company personnel or sending letters to the company with copies to the district government. Because these methods yielded little result, villages used road blockades or threats of road blockades to ensure that the company responded quickly.

What does this mean for the future?

Villages want to have a say in managing the forest in their direct surroundings. The experience with small timber harvest permits has increased villages' desire to be involved in negotiation processes. However, small-scale entrepreneurial logging does not enhance community management. The role of the villages is restricted to giving permission to access their territory, while control remains with the district government. The negotiation process should not only focus on benefits villages obtain from forest exploitation in their territory but also address forest use and management issues.

Villagers have shown to be quick learners in dealing with the small timber harvest permits. Additional information on existing regulations could assist in reducing conflicts and improving implementation. For example, villages could be provided with information on standard benefits or silviculture practices that logging companies have to apply. The villages then might be more confident in checking logging operations in the forest and reporting on violations of

regulations. More information at village level might avoid unrealistic expectations from the villages and thus reduce potential sources of conflict.

Many problems at village level relating to small timber harvest permits can be traced back to a lack of reliable information and transparency. Greater transparency might seem to be against the interests of the village elite. Experience shows that villagers have no problem if people involved in the management of forest exploitation get additional benefits as long as their distribution is acceptable.

When asked about the positive aspects of small timber harvest permits, the villagers first mention economic gains. The opportunity for villages to gain directly from forest exploitation has changed their perception of the value of forest resources. For future forest management systems, it will be important to balance the short-term economic gain that villagers have become used to without compromising long-term options.

If no mechanisms are created to resolve conflicts quickly and adequately, villagers may continue to rely on demonstrations. Villages have become disappointed with existing mechanisms for dealing with conflict, and started to rely on a more radical way of solving problems. To avoid escalation, effective alternative mechanisms have to be put in place.

During the two years of small timber harvest permit operations in the Malinau watershed, the direct impact on the forest was relatively small. It was more a lucky combination of factors that contributed to this than a well-designed and implemented forest management policy. Changing circumstances, such as the depletion of timber sources elsewhere or a dramatic rise in timber prices can quickly result in a rapid, uncontrolled exploitation if no system of checks and balances is developed. The expansion of roads has opened up new areas with high volumes of timber that will continue to attract interest for forest exploitation and increase pressure on forest resources.

In the meantime, forestry policy and permit issuance has been recentralized, the central government arguing that there has been too much abuse and uncontrolled logging. In Malinau, no new logging activities have started since the small timber harvest permit operations ceased. But there are also no new developments concerning the land and forest rights of indigenous people. It remains to be seen how the situation will evolve. For now, we can only speculate: the local government could ally itself with the communities to dispute the recentralization of forestry policy. However, the local government is still concerned about the problems it will face when dealing with the claims (and overlapping claims) of different ethnic groups. Their other, and maybe main concern, will be that - for its budget - the local government is almost completely dependant on central government, so it is unlikely to step too much out of line with central policies. The present "break" in forest exploitation in Malinau could provide a good opportunity for the local government and communities to rethink and discuss issues such as collaboration around forest management, community access and rights to land and forests.

Godwin Limberg M.Sc. is a Dutch agronomist who has worked since 2000 as a consultant for the Center for International Forestry Research (CIFOR) in East Kalimantan, Indonesia. The research on which this paper is based is part of CIFOR's long-term multidisciplinary research in the Malinau Research Forest that addresses the question of how to achieve long-term forest sustainability for a "large forest landscape" by integrating social, ecological and silvicultural aspects.

The other side of the story

The Danish public procurement policy on timber and wood products.

Sille Stidsen

”We [the indigenous peoples in Sarawak] urge buyers to come into our backyard and to see personally by yourself the true situation of logging in Sarawak. I personally appeal to all you buyers of Malaysian timber please spare my old parents, young school children, innocent poor communities and our future generation from being displaced from mother earth please.”¹

These desperate words of a headman from one of the indigenous communities of Sarawak (Malaysian Borneo) can be found in a joint NGO press release from late 2005. Indigenous communities all over the world have protested for years at logging companies encroaching onto their lands and undermining their livelihoods. But their voices seldom reach the people who are ultimately responsible for their forests being cut down – namely the consumers of timber and wood products in Europe and other parts of the world where these products have a high market value.

The need for market regulation

The European Union is one of the largest importers of timber and wood products (both legal and illegal) in the world.² The link between European consumers, the timber companies that supply these markets and the indigenous communities of Borneo and other forests of the world is thus quite clear.³ According to World Bank figures, approximately 60 million indigenous peoples around the world are almost wholly dependent on forests for their livelihood.⁴ So, in a way, the headman from Borneo quoted above speaks on behalf of many when he asks consumers of wood products to remember that we have a responsibility for the continued existence of his people.

But how can people planning to get a new tropical hardwood floor for their office in some institution in Denmark make sure that they do not support companies that have harvested the timber on an indigenous community’s land without their consent? A community unfortunate never to have obtained any papers stating their rights over the forest and which is thus left defenceless when the logging company comes with their heavy machinery and chainsaws. It is obviously quite difficult for individuals, and even large public institutions, to assess exactly what consequences their purchase has when they buy wood products here in Europe that come from thousands of kilometres away. Some may have heard about certification schemes guaranteeing the sustainability and legality of timber and wood products, but it is also very likely that they have not. Policies regulating the market and setting standards on what can be sold, or what should be bought, on European markets are therefore needed. Such policies are currently being, or have recently been, developed in a number of European countries. Denmark was the first European country to develop a timber procurement policy in 2003.⁵ Other countries have followed since then, and to date a total of five European countries (United Kingdom, Denmark, Belgium, the Netherlands and France) plus Japan each have their own policies. The Danish policy targets public and semi-public institutions, and deals with tropical timber and wood products only. Its impact was evaluated in late 2005, and a revision is currently underway.⁶

In this article, we will look specifically at the Danish public procurement policy on timber and wood products and highlight some of the critical issues that need to be dealt with in the ongoing revision if it is to be of real significance for forest-dependent indigenous communities. On a more general level, this discussion touches upon the implications and significance of “legality” and “sustainability”, as seen from an indigenous rights perspective.

The Danish Environmental Guidelines for Purchasing Tropical Timber

The Danish guidelines for purchasing tropical timber aim to make it easier for concerned consumers to make responsible choices when purchasing tropical timber or wood products.⁷ The guidelines describe legal and sustainable forest management and timber production, and stress that it is up to consumers to support initiatives to manage forests well. They conclude that public institutions should buy legal and sustainable timber/wood products whenever available. If legal and sustainable products are not available, it is recommended that they buy legal products from sources that are “on their way to being sustainably managed”. The final option, if the above are not available, is to buy timber/wood products that can at least be proven to come from legal sources. In order to make these guidelines operational and translate them into simple tools for the consumer to use, they include a list of certification schemes⁸ that have been assessed as living up to or guaranteeing these three levels of recommendation. In this list, the FSC (Forest Stewardship Council) certificate is recommended as proof of sustainability and legality (the number one recommendation) and the MTCC (Malaysian Timber Certification Council) certificate is given as proof of the timber being legal and produced in a way that is “on its way to becoming sustainable”. No specific labels are included for the last recommendation on buying timber that can at least be proven to be legal. Instead it is specified which kind of verification the purchaser should demand in order to be sure that the timber or wood product is produced in a legal manner.⁹

As the name suggests, the guidelines are not binding, and are thus intended as a tool for those who wish to act responsibly when buying tropical timber but need guidance to do so. This, and the fact that the guidelines are aimed at public institutions only, which account for as little as one-fifth of the total consumption of tropical timber and wood products in Denmark,¹⁰ may give the impression that this is an insignificant piece of paper with little potential to cause real change for the world’s tropical forests and their peoples. From an indigenous rights perspective, though, the Danish guidelines are significant in at least three ways:

- they include socio-economic and cultural conditions in their definition of sustainability, with direct reference to indigenous peoples’ rights to their land, resources and cultural integrity
- they set a standard that defines the future market for timber and wood products and thus give a clear signal to timber companies that legal and sustainable timber is going to be in demand in the future
- they have helped pave the way for other European countries to develop similar guidelines or policies and thus have the potential to influence the timber trade at European, not only Danish, level.

Furthermore, the Danish guidelines’ overall recommendation to buy FSC-certified timber and wood products whenever available is very positive from an indigenous rights angle since the FSC scheme’s standard for sustainability makes very clear reference to indigenous peoples’ rights to control their land and resources, and have

their special cultural and religious sites protected.¹¹ On top of this, the FSC scheme has a complaints mechanism that ensures that all stakeholders have a right to complain when certain principles are not implemented in certified concessions.

But there are problems too: with the guidelines, Denmark became the first country to accept the MTCC certificate as proof of legality. The MTCC label is even recommended as “on the way to sustainability” – that is, a better option than products that only have proof of legality. This middle category in the three level recommendation system was apparently included in order to recognize and award certification schemes that work towards improving their standards. Only the MTCC label was recommended on this level. This has been criticized heavily by environmental and indigenous organizations in Malaysia and Europe, who argue that Denmark thus helped pave the way into European markets for a product that is neither sustainable nor legal as it claims but, on the contrary, highly problematic for Malaysian forests and their indigenous inhabitants.¹²

MTCC and indigenous rights

Indigenous organizations in Malaysia have come out heavily against MTCC certification. A number of well-documented cases show how the MTCC certifies timber from indigenous territories, logged without their free, prior and informed consent. A recent example is the Samling Concession in Sarawak (Sela’an Linau Forest Management Unit in Ulu Baram), which has had much international exposure over the past months: the Samling Concession was granted an MTCC certificate in January 2005 even though the area overlaps with the indigenous Penan people’s territory. The Penan, traditionally hunter-gatherers and thus highly dependent on an intact forest base for their continued existence, have a long tradition of defending their territory and protesting against logging operations. In 1998, they filed their land claim in court under the provisions for Native Customary Rights. The MTCC certificate was awarded to the Samling Corporation despite the pending land claim, and despite the Penan expressing their objection to the logging operation by blocking roads to keep the machinery out. The Penan keep protesting at the local level, and campaigning at an international level in cooperation with European organizations such as the Bruno Manser Fonds of Switzerland.¹³ For the Penan it is simple: “*Without our forests, we, the Penan, cannot survive*”. This was a clear message from 17 Penan headmen in a letter sent in April 2006 to a British timber company that trades with the Samling Corporation, urging them to stop all cooperation with the Samling Group.¹⁴

Unfortunately, the Penan case is not unique. According to newspaper articles, in Sarawak alone more than 100 cases of Native Customary Rights claims have been filed and are still pending.¹⁵ In Peninsular Malaysia, too, there have been a number of reports of allegedly “legal” logging operations violating Orang Asli indigenous communities’ rights to land and livelihood. The case of the Semelai community in Bera is one of them: here a logging contractor has been issued a permit to log 1,000 tonnes of timber even though the area, which is the Semelai’s ancestral territory, has been officially given to them under the Federal Land Consolidation and Rehabilitation Authority Scheme. The land was never gazetted, and thus not protected or properly secured as Orang Asli land. According to newspaper sources, this is normal practice: more than half of the 50,008 ha of land in Peninsular Malaysia approved as Orang Asli land has yet to be gazetted.¹⁶ In practice, this means that the people living there are defenceless against so-called legal contractors coming in to get their hands on the forest’s timber resources.

The national Malaysian network of indigenous peoples and NGOs, JOANGOHutan, opposes the MTCC scheme fiercely, and urges European companies and governments not to accept it as proof of legality.¹⁷ Apart from ignoring indigenous communities' customary land rights, protected by Malaysian law and international human rights law, they highlight that the MTCC does not even live up to its own set standards for sustainability and legality. For JOANGOHutan, the MTCC is a "greenwash" of illegal and unsustainable logging that serves to open up new markets and make profit in the name of responsible forest management.

Legal timber and indigenous rights

As the problems described above with the MTCC scheme show, the "legality" of timber is a weak concept when seen from an indigenous rights perspective: a certificate proving "legality" does not give much of a guarantee that the timber is produced in a responsible or acceptable way. Forest-dwelling indigenous communities live on the margins of society, and a proper rights framework protecting them as peoples is, in many – and probably most – countries, not in place. In those countries where some kind of a policy framework does exist, the recognized rights are often not implemented properly. In some cases because recognized rights are contradicted by other laws (for example forest legislation,¹⁸ land use laws, etc.), in others because of problems in the administrative and judicial systems.¹⁹ Timber that is allegedly "legally produced" may therefore very well come from indigenous peoples' lands, having been logged without their free, prior and informed consent. In this sense, the MTCC examples above are not unique.

In the following, we shall briefly examine the interface between forestry law and the protection of indigenous peoples' rights in international human rights law. Denmark ratified ILO Convention 169 on Indigenous and Tribal Peoples in 1996, and has played an active role internationally in terms of promoting indigenous peoples' rights and establishing mechanisms to protect these rights.²⁰ With the ratification of ILO Convention 169 Denmark is obliged to promote and protect indigenous peoples' rights in all national policies. In order to draw some conclusions on how this can best be ensured in the context of the current revision of the Danish public procurement policy on timber and wood products, we shall look briefly at how international human rights standards have been applied to forestry conflicts involving indigenous peoples in recent years.

In recent years, ever more indigenous organizations and support NGOs have started to apply international human rights instruments in the defence of forest-dwelling indigenous communities' against logging companies' encroachment onto their territories.²¹ Indigenous communities' rights to their land, livelihoods and cultural integrity are all enshrined in international treaties and binding instruments such as the UN Convention on Civil and Political Rights, the UN Convention on the Elimination of all Forms of Racial Discrimination and ILO Convention 169 on Indigenous and Tribal Peoples. On top of this, the UN Human Rights Council adopted the UN Declaration on the Rights of Indigenous Peoples in June 2006 – a declaration that provides an even more comprehensive framework for an international standard on indigenous peoples' rights to land, resources, cultural integrity and, most importantly, self-determination. The Saami case described in Lawrence and Raitio's article in this volume is one example of how these principles have been used to defend communities from logging companies: in Finnish Sápmi, the Saami people's traditional reindeer herding came under increasing pressure throughout the 1990s due to increased logging activities. The Saami Council, individual Saamis and a couple of

environmental organizations responded with campaigns defending the Saami people's right to their land and to practice their traditional livelihood activity. The case was brought to the UN Human Rights Committee and, in late 2005, this resulted in the Committee ordering the state of Finland to stop all logging operations in the Nellim area until the land rights issue had been settled.²²

Another example is the submission to the UN Committee on the Elimination of Racial Discrimination (known as the CERD Committee) in June this year by indigenous organizations in the Democratic Republic of Congo (DRC) in cooperation with the British NGO Forest Peoples Programme (described in further detail in Lucy Mulvagh's article in this volume). The submission highlights how DRC's 2002 Forest Code neither recognizes nor guarantees sufficient protection for indigenous peoples' rights to land and resources, and its implementation leads to gross violations of indigenous peoples' human rights. Logging concessions are given on and around indigenous peoples' territories without consultation or consent (at the time of submission, at least 103 logging concessions were in operation), and they have not been consulted in connection with the elaboration of the Code's implementing laws. According to the submission, the situation is so serious that some indigenous peoples are threatened with extinction.²³

In Malaysia, organizations defending communities of Sarawak from logging operations have recently succeeded in having the national Human Rights Commission (Suhakam) visit some of the Penan communities in Sarawak that are suffering most from forest loss due to logging. The commission subsequently issued strong statements on the human rights violations being suffered by the Penan.²⁴

Conclusions

What does all this mean, then, for the Danish and other European public procurement policies on timber and wood products? First of all, the examples from both Malaysia and Finnish Sápmi show that only a policy framework that *promotes* indigenous peoples' rights will make a real difference to forest-dwelling indigenous communities that otherwise face a very uncertain future. Until and unless their rights to their forests, their traditional livelihoods and their cultural integrity are endorsed specifically in national forestry legislation, these rights will not be secured. Denmark and other European countries that are revising or developing public procurement policies for timber and wood products can influence these national processes by clearly demanding that if specific certification schemes are to be recognized as "legal" in our procurement policies then they must have a clean human rights record with no well-documented cases of indigenous communities being negatively affected by the logging. This obviously means non-acceptance of the MTCC certificate. At the same time, it calls for an open complaints mechanism whereby certificates accepted and recommended by the policy are up for scrutiny on a regular basis, with the possibility of civil society interests filing complaints when certification schemes have not lived up to their written standards.

Another lesson learnt from the examples above is that the only way the Danish policy can be really consistent with Denmark's position as an advocate of indigenous peoples' rights in various international processes is by making a strong case for sustainable rather than "legal" timber. As we have seen, the "legality" of timber and wood products is a weak concept in terms of respect for internationally established human rights standards. Accepting sustainable timber only, FSC certified or of the same standard, is thus the only way to ensure that the timber is not logged on indigenous territory without the people's free, prior and informed consent. If other

labels are included as proof of sustainability in the forthcoming revised policy, it is crucial that these have the same human rights standards as the FSC certificate – that is, special reference to respect for indigenous peoples' rights to territory, control of resources and cultural integrity.

Lastly, it must be stressed that there is no doubt that procurement policies play an important role in defining future markets for timber and wood products in Europe. Timber companies are, needless to say, interested in dealing with large public institutions, so the standard they are going to demand will eventually be available on the market. If the policy comes out with a clear and strong recommendation for public institutions to accept only FSC-certified wood, or products that can prove to be of a similar standard with alternative means of documentation, then there is hope that Danish and European public procurement policies can actually make a real difference to the forest-dwelling indigenous communities who are now suffering from the destructive practices of logging companies whose business success depends on the quantity of timber they can sell rather than its quality (in terms of sustainability).

The European NGO FERN has already suggested that a future harmonisation of EU public procurement policies on timber and wood products should take its starting point as the Dutch and Danish policies, since these are the most comprehensive and proactive of the existing policies.²⁵ In the light of this, the current revision of the Danish policy is important not only for Denmark but also, potentially, for indigenous peoples in timber-producing countries that supply European markets.

References

Colchester, Marcus, 2006: *Justice in the forest. Rural livelihoods and forest law enforcement.* Center for International Forestry Research (CIFOR):Forest Perspectives 3, 2006. Available at: www.cifor.cgiar.org

Danish Forest and Nature Agency, 2003: *Purchasing Tropical Timber. Environmental guidelines.* Ministry of the Environment, Denmark.
2006: *Evaluation of the Danish Guidelines on public purchase of tropical timber. Sub project A: User survey, Sub project B: Comparison with policies in UK, Netherlands, France and Germany together with updates on certification schemes, Sub project C: Juridiske og administrative aspekter* (only available in Danish). Ministry of the Environment, Denmark.

FERN, 2001: *Forests of Fear. The abuse of human rights in forest conflicts.*
2006: Government procurement policies. In: *EU Forest Watch*, issue 107, July / August 2006.
Both available at: www.fern.org

FERN, Greenpeace and WWF, 2004: *Facing Reality. How to halt the import of illegal timber in the EU.* Brussels, 2004.

FERN and JOANGO Hutan, 2006: *Forest governance in Malaysia. An NGO perspective.* Recommendations for a voluntary Partnership Agreement with the EU. FERN and JOANGO Hutan, September 2006.

Forest Peoples Programme, 2006 a: *Persistent and Pervasive Racial Discrimination against Indigenous Peoples in the Democratic Republic of Congo.* Formal Request to Initiate an Urgent Action Procedure to Avoid Immediate and Irreparable Harm. Submitted to the [UN] Committee on the Elimination of Racial Discrimination by 6 indigenous organizations of the DRC and the Forest Peoples Programme.

Forest Peoples Programme, 2006 b: *Liberia's forestry law in an international context: Reasons for concern.* A report by Forest Peoples Programme, 12 November 2006.

Greenpeace, 2006: *Missing links. Why the Malaysian Timber Certification Council (MTCC) certificate doesn't prove that MTCC timber is legal nor sustainable.* Greenpeace International, Amsterdam.

IWGIA, 2006: *The Indigenous World 2006.* Copenhagen, 2006.

JOANGOHutan, 2005: *The Malaysian Timber Industry finds cause for celebration!* Leaflet. Network of Indigenous Peoples and NGOs on Forest Issues (JOANGOHutan), Suban Jaya.

Stavenhagen, 2006: *Human rights and indigenous issues. Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Mr. Rodolfo Stavenhagen.* United Nations Economic and Social Council, Commission on Human Rights. Sixty-second session, item 15 of the provisional agenda (E/CN.4/2006/78).

Other sources:

Joint press release by 66 NGOs, 1 December 2005: *NGOs urge European governments and industry not to accept Malaysian Timber Certification Scheme MTCC based on its disregard for indigenous peoples' rights.* Available at: http://www.fern.org/media/documents/document_3469_3470.pdf

The Rainforest Foundation, Norway, 2005: Serious shortcomings in Malaysia's certification scheme. Available at: <http://www.regnskog.no/html/265.htm>

The Borneo Resources Institute (BRIMAS) web site: <http://brimas.www1.50megs.com/> . Information on Sarawak's indigenous communities' struggle for land and resource rights, including press releases, links to newspaper articles, etc..

Sille Stidsen is an anthropologist and Project Coordinator at IWGIA. She is presently representing IWGIA on the consultative steering committee for the revision of the Danish Timber Procurement Policy.

Notes

¹ Statements of Indigenous People of Sarawak regarding the Malaysian Timber Certification Council scheme (MTCC), appendix to a joint statement by 66 European NGOs, February 2005, urging European governments and industry not to accept the MTCC based on its disregard for indigenous peoples' rights.

² According to the European Commission, around half the timber and wood products imported to Europe come from illegal sources (quoted in the background information to a discussion in the Danish Parliament on a ban on imports of illegal wood, available in Danish at: <http://www.ft.dk/?/samling/20051/beslutningsforslag/B17>).

³ See for example FERN, Greenpeace and WWF, 2004.

⁴ World Bank 2002, quoted in Colchester 2006:9.

⁵ The Danish policy is available (in Danish and English) at: http://www.skovognatur.dk/Udgivelser/Tidligere/2003/tropisk_trae.htm

⁶ The evaluation is available (in Danish and English) at: http://www.skovognatur.dk/Emne/Skov/Miljoe/Indkoeb/Evaluering_rapporter.htm

⁷ The existing policy deals with tropical timber only, the new revised policy that will come out in 2007 will cover all timber and wood products.

⁸ A number of timber certification schemes have been developed at international and national levels in order to give consumers simple tools with which to make responsible choices – and for the timber industry to have clear brands under which to market legal and sustainable timber.

⁹ This includes: make sure the producer has obtained the necessary permits to carry out the logging, has fulfilled all national legislation regarding forest management, paid for permits and any taxes due, and has obtained all statutory documentation from the authorities.

¹⁰ Danish Forest and Nature Agency, 2006, Sub project A: V.

¹¹ Read the principles and more background information on the FSC certification scheme at the organization's website: <http://www.fsc.org/en/>.

¹² See for example Greenpeace 2005, JOANGO Hutan 2005, FERN 2006.

¹³ www.bmf.ch/en/en_index.html

¹⁴ *Times online*, 5 May, 2006: Dying tribe takes on timber giants over lost habitat. By Richard Lloyd Parry and Devika Bhat.

¹⁵ *Malaysiakini*, 29 April, 2006: Jabu flayed over ignorance of NCR land crisis. By Tony Thien.

¹⁶ *Malaysiakini*, 18 April, 2006: Logging 'legal', land status in dispute. By Fauwaz Abdul Aziz.

¹⁷ **JOANGO Hutan, 2005.**

¹⁸ Perhaps not surprisingly, a recent study by the Centre for International Forestry Research (CIFOR) on forest law enforcement and its impact on rural livelihoods concludes that “*forestry laws have typically been heavily influenced by the timber industry lobby*” (Colchester 2006).

¹⁹ The problem of the “implementation gap” between legislation protecting and promoting indigenous peoples' human rights and the day-to-day reality has been identified by the United Nations Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples as being one of the main issues that states need to address. His 2006 report to the 62nd session of the Commission on Human Rights highlights this.

²⁰ Denmark played an active role in the drafting of the UN Declaration on the Rights of Indigenous Peoples, adopted by the Human Rights Council in June 2006, and in the processes leading to the establishment of the UN Permanent Forum on Indigenous Issues in 2002.

²¹ See for example FERN 2001, Colchester 2006, Forest Peoples Programme 2006a, and IWGIA 2006: 45-50. In a recent report the Forest Peoples Programme summarizes how an increasing concern to ensure that forest policies lead to sustainable forest management while at the same time respecting the rights of communities in forests is also reflected in a number of inter-governmental declarations on forest issues: “*Through the Rio Declaration and Agenda 21, the non-legally Binding Statement of Principles on All Types of Forests, the 'proposals for action' agreed at the UN intergovernmental Panel on Forests and the Inter Governmental Forum on Forests, the decisions of the Commission on Sustainable Development, and the Convention on Biological Diversity's Expanded Programme of Work on Forest Biological Diversity, governments have committed themselves inter alia to:*

- *address forest issues in a holistic and cross-sectoral manner*

-
- *ensure the participation of local communities and indigenous peoples in the formulation, planning and implementation of national forest policies*
 - *recognize and support the identity, culture and rights of indigenous peoples and other forest dependent people*
 - *formulate policies and laws to secure land tenure for indigenous peoples and local communities*
 - *recognize and support community-based forest management*
 - *develop regimes to protect traditional forest related knowledge”.*

(Forest Peoples Programme 2006 b:4)

²² Read more about the Inari and Nellim logging case in Raitio and Lawrence’s article in this volume, in IWGIA 2006, and at www.samicouncil.org. Read more about similar cases in Colchester 2006, pp. 53.

²³ The full submission can be downloaded from the Forest Peoples Programme’s website at: www.forestpeoples.org (see the full reference above under Forest Peoples Programme 2006a).

²⁴ Links to press releases and newspaper articles on this can be found at BRIMAS’ website: <http://brimas.www1.50megs.com/>. See for ex. *Malaysiakini*, September 26, 2006: Penan plight shocks Suhakam team. By Bede Hong.

²⁵ FERN 2006, pp 1.

Text Box: British company stops purchase of Sarawak timber

As this article goes to print, we receive a press release from the Bruno Manser Fund in Switzerland (12 December 2006), saying that the British timber company Jewson Ltd. will stop purchasing and selling timber from Sarawak. This is the company to whom the 17 Penan leaders sent their letter of complaint in April, quoted above.

Read the press release at: <http://www.bmf.ch/en/news/>